

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
“Rule 17a-5 and Form X-17a-5”

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. Section 17(e)(1)(A) of the Exchange Act requires every broker-dealer registered with the Commission to annually file with the Commission: a balance sheet and income statement “certified by an independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002” and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule, may prescribe. A registered public accounting firm means a public accounting firm registered with the Public Company Accounting Oversight Board (“PCAOB”).¹ Section 17(e)(2) provides that the Commission, by rule, may prescribe the form and content of the financial statements and the accounting principles and standards used in their preparation.

The Commission has adopted Rule 17a-5, which is the reporting rule for broker-dealers.² 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”). Rule 17a-5(b) requires that a report be filed when a broker-dealer holding a membership in a national securities exchange or registered national securities association ceases to be a member in good standing of the exchange or association. Rule 17a-5(c) requires broker-dealers to furnish certain financial information to customers.³ Rule 17a-5(d) requires broker-dealers to file annual reports, which generally must be audited by an independent public accountant. Rule 17a-5(e) prescribes the nature and form of the reports filed under Rule 17a-5(d). Rule 17a-5(f) pertains to the qualifications of accountants. Rule 17a-5(g) contains audit objectives. Rule 17a-5(h) addresses the extent and timing of audit procedures. Rule 17a-5(i) contains general provisions relating to accountant’s reports. Rule 17a-5(j) addresses the accountant’s report on material inadequacies. Rule 17a-5(k) pertains to supplemental reports. Rule 17a-5(l) pertains to the use of certain statements filed with the Commission. Rule 17a-5(m) addresses extensions and exemptions. Rule 17a-5(n) pertains to notifications of changes in fiscal year. Rule 17a-5(o) contains filing requirements. Rule 17a-5(p) pertains to OTC derivatives dealers.

The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens. The FOCUS Report consists of: (1) Part I which is a monthly report that must be filed

¹ Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204).

² The OMB Control Number for Rule 17a-5 is 3235-0123.

³ Rule 17a-5(c) is subject to a separate Paperwork Reduction Act filing (OMB Control Number 3235-0199).

by every broker-dealer that clears transactions or carries customer accounts; (2) one of three alternative quarterly reports: a comprehensive Part II which must be filed by every broker-dealer that clears transactions or carries customer accounts, a less detailed Part IIA which must be filed by broker-dealers that do not clear transactions or carry customer accounts, or a Part IIB that is filed only by specialized broker-dealers registered with the Commission as OTC Derivatives Dealers;⁴ (3) Supplemental Schedules which must be filed annually; and (4) a Facing Page which must be filed with the annual audited report of financial statements.

2. Purpose and Use of the Information Collection

Reports required to be made under Rule 17a-5 are used, among other things, to monitor the financial and operational condition of a broker-dealer by the self-regulatory organization that is the broker-dealer's designated examining authority and by the Commission staff. The FOCUS Report and the annual reports are the primary means of ensuring compliance with the Commission's financial responsibility rules. A firm's failure to comply with these rules would severely impair the Commission's and the self-regulatory organizations' ability to protect customers.

FOCUS Report information is used in preparation for broker-dealer examinations and inspections. The completed forms also are used to determine which firms are engaged in various securities-related activities, the extent to which they are engaged in those activities, and how economic events and government policies might affect various segments of the securities industry.

3. Consideration Given to Information Technology

The data required in the FOCUS Report are tailored to the complexity of the broker-dealer's business. The burden is therefore commensurate with the type of business in which the firm engages. The Commission estimates that approximately 90% of FOCUS Reports were filed electronically. Annual reports, however, are filed with the Commission in paper form.

4. Duplication

The Commission designed Rule 17a-5 to eliminate duplicative reporting requirements among the various securities regulatory agencies. Therefore, any duplication of the information requested is minimal.

5. Effect on Small Entities

Broker-dealers must file one of three alternative quarterly reports on Form X-17A-5: a comprehensive Part II of Form X-17A-5, which must be filed by every broker-dealer that clears transactions or carries customer accounts; a less detailed Part IIA which must be filed by broker-dealers that do not clear transactions or carry customer accounts; or a Part IIB that is filed only by specialized broker-dealers registered with the Commission as OTC Derivatives Dealers. The

⁴ Part IIB of Form X-17A-5 is required to be filed by OTC derivatives dealers under Rule 17a-12 and is subject to a separate Paperwork Reduction Act filing (OMB Control Number 3235-0498).

majority of small broker-dealers file Part IIA of Form X-17A-5 because they do not clear transactions or carry customer accounts. Part IIA is shorter and requires less time to complete than Part II. Out of 513 firms that must file Part II, only 19 are small firms. It would be inappropriate to provide these small firms with an exemption from this Rule because the report provides critical financial information from the firms responsible for the safekeeping and disposition of customer funds and securities.

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 1320.5(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. The Commission received one comment letter requesting substantive changes to Form X-17a-5. The letter did not provide any PRA-related comments. It did not refer to any of the burden estimates provided in the Federal Register notice, nor did it provide any suggestions for reducing the current burden. Rather, the comment letter suggests additional information be provided by the respondents to the SEC. Any changes to Form X-17A-5, including those suggested by this commenter, would need to be made pursuant to a SEC rulemaking.

9. Payment or Gift

No payment or gift is provided to respondents.

10. Confidentiality

Reports filed pursuant to Rule 17a-5(a) are deemed to be confidential pursuant to Rule 17a-5(a)(3). Pursuant to Rule 17a-5(e)(3), the statements filed pursuant to Rule 17a-5(d) are public, but if the statement of financial condition is bound separately, the balance of the audited financial statements will be deemed confidential.

11. Sensitive Questions

Not applicable; no inquiries of a sensitive nature are made.

12. Burden of Information Collection

The variation in the size and complexity of broker-dealers subject to Rule 17a-5 make it difficult to calculate the burden of the information collection. However, the Commission estimated, on average, that each report required to be filed under Rule 17a-5 will require approximately 12 hours. At year-end 2011, the Commission estimated that there were approximately 4,802 broker-dealers registered with the Commission, and that of those firms there were approximately 513 broker-dealers that clear transactions or carry customer accounts. The Commission estimated that approximately 513 firms filed monthly reports, approximately 4,134 firms filed quarterly reports, and approximately 63 firms filed annual reports on Form X-17A-5. In addition, approximately 4,650 firms filed annual audited reports. As a result, there were approximately 27,405 total annual responses $((513 \times 12) + (4,134 \times 4) + 63 + 4,650 = 27,405)$. This resulted in an estimated annual reporting burden of 328,860 hours $(27,405 \text{ annual responses} \times 12 \text{ hours} = 328,860 \text{ hours})$.

In addition, the Commission estimated that approximately 9 broker-dealers will elect to use Appendix E to Rule 15c3-1 to compute certain of their capital charges (as of September 2012, six brokers or dealers have elected to use Appendix E). The Commission estimates that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is approximately 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, the Commission estimates that the total additional annual reporting burden for these 9 broker-dealers is approximately 1,080 hours $((48 + 32 + 40) \times 9 = 1,080)$.

The Commission therefore estimates that the total annual reporting burden under Rule 17a-5 is approximately 330,000 hours $(328,860 + 1,080 = 329,940, \text{ rounded to } 330,000)$.

13. Costs to Respondents

Other than the costs discussed in item 12 above, the Rule does not impose any additional costs.

14. Costs to Federal Government

In 2012, the Commission staff completed 443 broker-dealer examinations, spending an average of one and one half hours reviewing a firm's FOCUS Report in preparation for each examination. Therefore, the Commission staff spends approximately 664.5 hours each year $(443 \text{ examinations} \times 1.5 \text{ hours})$ reviewing FOCUS Reports. The cost to the Commission, including the value of staff time and related overhead, is \$50 per hour, resulting in a total annual cost of \$33,225 $(664.5 \text{ hours} \times \$50 \text{ per hour})$. These estimates have been computed based on the GSA, Guide to Estimating Reporting Costs (1973).

15. Changes in Burden

Previously, at year end of 2009, the Commission estimated that there were approximately 5,190 registered brokers or dealers. At year end of 2009, there were approximately 29,370 total annual responses with the total annual hour burden as 354,360 hours. However, as stated above, at year end of 2011 the Commission estimated that there were approximately 4,802 registered brokers or dealers and 27,405 total annual responses with a total annual hour burden of 328,860. Thus, the change in annual burden (25,500) is due to changes in the number of respondents that file the form pursuant to Rule 17a-5.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit the OMB Expiration Date

Not applicable. We are not requesting authorization to omit the expiration date.

18. Exceptions to Certification

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.