

SUPPORTING STATEMENT
for the Paperwork Reduction Act New Information Collection Submission for
Rule 17a-4 – Records to be Preserved by Certain Exchange Members, Brokers and Dealers

A. JUSTIFICATION

1. Necessity of Information Collection

All broker-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 and broker-dealers. Section 17(a)(1) provides in part that all members of a national securities exchange and registered broker-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].”

In 1940, the Commission, to standardize recordkeeping practices throughout the industry, adopted Rules 17a-3 and 17a-4,³ which codified and specified minimum standards with respect to business records that a broker-dealer must create and maintain. Rule 17a-3 requires exchange members and broker-dealers to make and keep current certain records relating to a member’s or broker-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.

On July 30, 2013, the Commission adopted amendments to Rule 17a-4 in conjunction with the amendments to the broker-dealer financial responsibility rules.⁴ Specifically, the amendments to Rules 17a-3 and 17a-4 will require certain large broker-dealers to make and keep current a record documenting credit, market, and liquidity risk management controls established and maintained by the broker-dealer to assist it in analyzing and managing the risks associated with its business activities. The amendment only will apply to broker-dealers that have more than (1) \$1,000,000 in aggregate credit items as computed under the customer reserve formula of Rule 15c3-3, or (2) \$20,000,000 in capital. The amendment to Rule 17a-4 will require a broker-

¹ 15 U.S.C. 78q(a).

² 15 U.S.C. 78w(a).

³ 17 CFR 240.17a-3; 17 CFR 240.17a-4.

⁴ Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824 (Aug. 21, 2013).

dealer to preserve the records required pursuant to paragraph (a)(23) of Rule 17a-3 until three years after the termination of the use of the risk management controls documented therein.

2. Purpose and Use of the Information Collection

The purpose of requiring broker-dealers to maintain the records specified in Rule 17a-4 is to help ensure that examiners and other representatives of the Commission, state securities regulatory authorities, and the self-regulatory organizations (“SROs”) have access to the information and documents necessary to determine whether broker-dealers are in compliance with the Commission’s anti-fraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and state laws, rules, and regulations. Without Rule 17a-4, it would be extremely difficult, if not impossible, for the 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 broker-dealers to use electronic storage media to comply with the record-keeping requirements under the Exchange Act. Because it 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

Not applicable. There is no duplication.

5. Effects on Small Entities

Because 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, broker-dealers may choose which media (hard-copy, microfiche, electronic storage, etc.) that is most appropriate for their business. The books and records required under Rule 17a-4 are normally retained by small broker-dealers.

With respect to the recent amendments to Rule 17a-4,⁵ such amendments will not affect any small entities because these requirements only will apply to certain large broker-dealers.

6. Consequences of Not Conducting Collection

Rule 17a-4 is a record preservation rule. Without Rule 17a-4, it would be extremely difficult, if not 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-

⁵ See Financial Responsibility Rules for Broker-Dealers, 78 FR 51824.

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, paragraph (a) of Rule 17a-4 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 paragraph (a)(17) of Rule 17a-3 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-dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker-dealer until three years after the termination of the use of the manual.

In addition, paragraph (d) of Rule 17a-4 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 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 documents required to be retained under Rule 17a-4 do not become obsolete (e.g., organizational documents).

8. Consultations Outside the Agency

The Commission requested comment in the proposing release on the included Paperwork Reduction Act (“PRA”) analysis in March 2007.⁶ The Commission re-opened the comment period in May 2012.⁷ The Commission received one comment addressing the PRA generally.

The commenter specifically stated that the estimates the Commission provided utilized only the number of broker-dealers that the Commission “justifiably considers to be affected by the proposals.”⁸ The commenter, however, believed that most, if not all, broker-dealers will spend over 90 hours each analyzing the effects of the rules as implemented, will spend many more than 90 hours each in implementing procedures and modifying their written supervisory procedures to comply with the new rules, will spend in excess of 240 hours each in the monitoring of such rules, and will spend in excess of \$15,000 each for outside counsel and auditor opinions or work product. This commenter did not provide additional detail about the basis for its view that the Commission’s estimates were too low. The Commission agreed with the commenter that broker-dealers directly affected by the rule amendments may be required to implement procedures or modify their written supervisory procedures in order to comply with the rule amendments. In cases where the final rule amendments required a broker-dealer to implement or document certain policies and procedures, these hour burdens were included in the final PRA hour estimates discussed in the adopting release. Consequently, the Commission addressed the commenter’s concerns that directly relate to the collections of information in the PRA of the adopting release. However, the amendments to Rule 17a-4 do not contain policies or procedures and are, therefore, not affected by this comment.⁹

9. Payment or Gift

No payment or gift is provided 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

⁶ See Amendments to Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 55431 (Mar. 9, 2007), 72 FR 12862 (Mar. 19, 2007).

⁷ See Amendments to Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 66910 (May 3, 2012), 77 FR 27150 (May 9, 2012).

⁸ See letter from Michael Scillia, National Investment Banking Association, to Securities and Exchange Commission (July 12, 2012), <http://www.sec.gov/comments/s7-08-07/s70807-102.pdf>.

⁹ This comment, however, relates to the amendment to Rule 17a-3 and is addressed in the collection of information to Rule 17a-3. Rule 17a-4 only requires the preservation of the policies and procedures required to be documented under Rule 17a-3.

anticipation of, or in connection with an examination or inspection of the books and records of any person or entity.

11. Sensitive Questions

Not applicable. No information of a sensitive nature is required.

12. Burden of Information Collection

As of December 31, 2011, there were 4,709 broker-dealers. 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 the recordkeeping burden associated with Rule 17a-4 is 1,196,086 hours each year.¹⁰

As discussed above, the amendments to Rules 17a-3 and 17a-4 will require certain large broker-dealers to make and keep current a record documenting credit, market, and liquidity risk management controls established and maintained by the broker-dealer to assist it in analyzing and managing the risks associated with its business activities. The amendment only will apply to broker-dealers that have more than (1) \$1,000,000 in aggregate credit items as computed under the customer reserve formula of Rule 15c3-3, or (2) \$20,000,000 in capital, including debt subordinated in accordance with Appendix D to Rule 15c3-1. The amendment to Rule 17a-4 will require a broker-dealer to preserve the records required pursuant to paragraph (a)(23) of Rule 17a-3 until three years after the termination of the use of the risk management controls documented therein. This amendment to Rule 17a-4 should not change the current annual hour burden for Rule 17a-4 because the paperwork burden associated with this amendment derives from the substance of the amendments to paragraph (a)(23) of Rule 17a-3. Therefore, the Commission is not revising the annual recordkeeping hour burden for Rule 17a-4 as a result of the amendment to Rule 17a-4.¹¹

13. Costs to Respondents

Based on conversations with members of the securities industry and the Commission's experience in the area, the Commission estimates 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. As noted above, as of December 31, 2011, there were 4,709 broker-dealers. Therefore, the Commission estimates that the annual recordkeeping cost burden is \$23,545,000.¹²

¹⁰ 4,709 broker-dealers x 254 hours = 1,196,086 hours.

¹¹ The Commission has revised the estimated PRA for Rule 17a-3 resulting from the amendment to paragraph (a)(23) of Rule 17a-3.

¹² 4,709 broker-dealers x \$5,000 = \$23,545,000.

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.

15. Changes in Burden

Overall, the annual recordkeeping hour burden and costs have generally decreased due to a decrease in the overall number of registered broker-dealers from 5,057 in 2010 to 4,709 in 2011.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration Date

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

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.