

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
***Rule 17a-5 – Reports to be Made by Certain Brokers and Dealers***

**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 file annually with the Commission: (1) 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 (2) 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”).<sup>1</sup> Section 17(e)(2) of the Exchange Act 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.

Rule 17a-5 under the Exchange Act (17 CFR 240.17a-5) is a reporting rule for broker-dealers.<sup>2</sup> On July 30, 2013, the Commission adopted amendments to Rule 17a-5, discussed in greater detail below.<sup>3</sup>

*Overview of Rule 17a-5 Prior to the Amendments*

Paragraph (a) of Rule 17a-5 requires broker-dealers to file Form X-17A-5 (17 CFR 249.617), the Financial and Operational Combined Uniform Single Report (“FOCUS Report”). 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 by every broker-dealer that clears transactions or carries customer accounts;<sup>4</sup> (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 over-the counter (“OTC”)

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

<sup>2</sup> The Office of Management and Budget (“OMB”) Control Number for Rule 17a-5 is 3235-0123.

<sup>3</sup> [Broker-Dealer Reports](#), Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910 (Aug. 21, 2013).

<sup>4</sup> In practice, broker-dealers are no longer required to file Part I of the FOCUS Report. [See](#) 17 CFR 240.17a-5(a)(4).

derivatives dealers;<sup>5</sup> and (3) Part III, a Facing Page, which must be filed with the annual audited financial statements broker-dealers file with the Commission pursuant to paragraph (d) of Rule 17a-5.

Paragraph (c) of Rule 17a-5 requires broker-dealers to furnish certain financial information to customers.<sup>6</sup> Paragraph (d) of Rule 17a-5 requires broker-dealers, subject to limited exception, to file annual reports, including financial statements and supporting schedules that generally must be audited by a PCAOB-registered independent public accountant in accordance with PCAOB standards.<sup>7</sup> Paragraph (h) of Rule 17a-5 contains notification requirements related to certain findings made during the course of the independent accountant's audit.<sup>8</sup> Paragraph (k) of Rule 17a-5 pertains to supplemental reports to be filed by broker-dealers that compute certain capital charges in accordance with Appendix E to Exchange Act Rule 15c3-1.<sup>9</sup> Paragraph (p) of Rule 17a-5 provides that OTC derivatives dealers may comply with Rule 17a-5 by complying with Exchange Act Rule 17a-12.<sup>10</sup>

#### *Amendments to Rule 17a-5*

In addition to the annual audited financial statements and supporting schedules broker-dealers must file with the Commission, the amendments to Rule 17a-5 require broker-dealers to file one of two new reports – either a compliance report or an exemption report – prepared by the broker-dealer.<sup>11</sup> A broker-dealer that did not claim that it was exempt from Exchange Act Rule 15c3-3<sup>12</sup> throughout the most recent fiscal year (generally, a “carrying broker-dealer”) must file the compliance report, and a broker-dealer that did claim it was exempt from Rule 15c3-3 throughout the most recent fiscal year (generally, a “non-carrying broker-dealer”) must file the exemption report.<sup>13</sup> Broker-dealers must make certain statements and provide certain information relating to the financial responsibility rules in these reports.<sup>14</sup>

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<sup>5</sup> These quarterly reports must be filed within 17 business days after the end of each calendar quarter and within 17 days after the end of the fiscal year of the broker-dealer if that date is not the end of a calendar quarter. However, if a broker-dealer ceases to be a member in good standing of a national securities exchange or registered national securities association, paragraph (b) of Rule 17a-5 requires the broker-dealer to file its final applicable report within two business days after the broker-dealer ceases to be a member in good standing of such exchange or association, subject to certain exceptions.

<sup>6</sup> 17 CFR 240.17a-5(c). Paragraph (c) of Rule 17a-5 is subject to a separate Paperwork Reduction Act filing (OMB Control Number 3235-0199).

<sup>7</sup> 17 CFR 240.17a-5(d).

<sup>8</sup> 17 CFR 240.17a-5(h).

<sup>9</sup> 17 CFR 240.17a-5(k); 17 CFR 240.15c3-1e.

<sup>10</sup> 17 CFR 240.17a-5(p); 17 CFR 240.17a-12.

<sup>11</sup> See paragraph (d)(1)(i) of Rule 17a-5, as amended.

<sup>12</sup> Rule 15c3-3, which is referred to as the “customer protection rule,” generally requires broker-dealers to, among other things, maintain physical possession or control over customers’ fully paid and excess margin securities and to maintain a reserve of funds or qualified securities. 17 CFR 240.15c3-3.

<sup>13</sup> See paragraphs (d)(1)(i)(B)(1) and (2) of Rule 17a-5, as amended.

<sup>14</sup> See paragraphs (d)(3) and (4) of Rule 17a-5, as amended. For purposes of the amendments to Rule 17a-5, the term “financial responsibility rules” refers to Rule 15c3-1, Rule 15c3-3, Exchange Act

The amendments require a broker-dealer to engage a PCAOB-registered independent public accountant to prepare a report based on an examination of the broker-dealer's financial report in accordance with PCAOB standards.<sup>15</sup> A carrying broker-dealer also must engage the PCAOB-registered independent public accountant to prepare a report based on an examination of certain statements in the broker-dealer's compliance report.<sup>16</sup> A non-carrying broker-dealer must engage the PCAOB-registered independent public accountant to prepare a report based on a review of certain statements in the broker-dealer's exemption report.<sup>17</sup> In each case, the examination or review must be conducted in accordance with PCAOB standards. The broker-dealer must file these reports with the Commission along with the financial report and the compliance report or exemption report prepared by the broker-dealer.<sup>18</sup>

In addition, the annual reports must be filed with the Securities Investor Protection Corporation ("SIPC") if the broker-dealer is a member of SIPC.<sup>19</sup> Broker-dealers also must generally file with SIPC a supplemental report on the status of the membership of the broker-dealer in SIPC.<sup>20</sup> The supplemental report must include a report of the independent public accountant that covers the SIPC annual general assessment reconciliation or exclusion from membership forms based on certain procedures specified in the rule. In the future, SIPC may determine the format of this report by rule, subject to Commission approval.<sup>21</sup>

Finally, the PCAOB-registered independent public accountant must immediately notify the broker-dealer if the accountant determines during the course of preparing the accountant's reports that the broker-dealer is not in compliance with the financial responsibility rules or if the accountant determines that any material weakness exists in the broker-dealer's internal control over compliance with the financial responsibility rules.<sup>22</sup> The broker-dealer, in turn, must file a notification with the Commission and its DEA under Rule 15c3-1, Rule 15c3-3, or Rule 17a-11 if the independent public accountant's notice concerns an instance of non-compliance that would trigger notification under those rules.<sup>23</sup> Under the amendments to Rule 17a-11, a broker-dealer also must file a notification with the Commission and its DEA if the broker-dealer discovers or is notified by the independent public accountant of the existence of any material weakness (as

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Rule 17a-13, and applicable rules of designated examining authorities ("DEAs") that require broker-dealers to periodically send account statements to customers.

<sup>15</sup> See paragraphs (f)(1) and (g)(1) of Rule 17a-5, as amended.

<sup>16</sup> See paragraphs (f)(1) and (g)(2)(i) of Rule 17a-5, as amended.

<sup>17</sup> See paragraphs (f)(1) and (g)(2)(ii) of Rule 17a-5, as amended.

<sup>18</sup> See paragraph (d)(1)(i)(C) of Rule 17a-5, as amended.

<sup>19</sup> See paragraph (d)(6) of Rule 17a-5, as amended.

<sup>20</sup> See paragraph (e)(4) of Rule 17a-5, as amended.

<sup>21</sup> Id.

<sup>22</sup> See paragraph (h) of Rule 17a-5, as amended.

<sup>23</sup> Id.

defined in the amendments) in the broker-dealer's internal control over compliance with the financial responsibility rules.<sup>24</sup>

## **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 broker-dealer's DEA and by Commission staff. The reports required under Rule 17a-5 are one of the primary means of ensuring compliance with the financial responsibility rules. A firm's failure to comply with these rules would severely impair the ability of the Commission and the firm's DEA to protect customers.

FOCUS Report data 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 is 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. Approximately 90% of FOCUS Reports are filed electronically. Annual reports, however, are filed with the Commission in paper form.

## **4. Duplication**

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

With respect to the amendments to Rule 17a-5, the independent public accountant's report based on an examination of the compliance report will satisfy the internal control report requirement of Rule 206(4)-2 under the Investment Advisers Act of 1940 because the operational requirements of the financial responsibility rules are consistent with the control objectives outlined in the Commission's guidance on Rule 206(4)-2. This will minimize duplicative reporting by dually-registered broker-dealers/investment advisers by avoiding a requirement to obtain two reports from independent public accountants.

## **5. Effect on Small Entities**

As discussed above, a broker-dealer typically must file one of three alternative quarterly reports on Form X-17A-5: (1) a comprehensive Part II of Form X-17A-5, which must be filed

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<sup>24</sup> See paragraph (e) of Rule 17a-11, as amended.

by every broker-dealer that clears transactions or carries customer accounts; (2) a less detailed Part IIA, which must be filed by a broker-dealer that does not clear transactions or carry customer accounts; or (3) a Part IIB, which is filed only by a specialized broker-dealer registered with the Commission as an OTC derivatives dealer. The 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 Rule 17a-5 because the FOCUS Report provides Commission and DEA staff with critical financial information from the firms responsible for the safekeeping and disposition of customer funds and securities.

With respect to the amendments to Rule 17a-5, the burden associated with the amendments would generally be less on a small broker-dealer. Based on FOCUS Report data, there are currently 812 broker-dealers that, under paragraph (c) of Rule 0-10 (17 CFR 240.0-10(c)), are classified as “small” businesses or organizations for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). As noted above, there are approximately 19 small broker-dealers that clear transactions or carry customer accounts. A compliance report would be required to be filed only by a broker-dealer that is not exempt from Rule 15c3-3. Further, only a broker-dealer that clears transactions or carries customer accounts would be required to comply with an amendment to Rule 17a-5 in which the broker-dealer agrees to allow representatives of the Commission and their DEAs, if requested in writing for purposes of a broker-dealer examination, to review the documentation associated with the reports of an independent public accountant, and to agree to permit the independent public accountant to discuss with the representatives the findings associated with those reports.

## **6. Consequences of Not Conducting Collection**

The required reports are used by securities regulators to monitor the financial and operational condition of broker-dealers. If the required reports were not made, the ability of the Commission and the DEAs to monitor the financial and operational condition of broker-dealers would be impaired potentially affecting regulators’ capability 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 Commission requested comment on the Paperwork Reduction Act (“PRA”) analysis in the proposing release.<sup>25</sup> The Commission received comments on the proposed PRA with respect to the filing of the compliance report and the external costs of the engagement of accountant amendments.

*Compliance Report.* On average, a carrying broker-dealer would spend approximately 60 hours each year to prepare its compliance report, as proposed.<sup>26</sup> One commenter stated that the proposal did not “address the additional costs broker-dealers would incur in preparing Compliance Reports.”<sup>27</sup> The commenter, however, did not comment directly on the estimated hour burden or provide specific examples of costs, in addition to the hour burdens, that broker-dealers would incur.<sup>28</sup> Another commenter also stated that the proposed estimate of 60 hours “is not an accurate estimate of the time burden to complete the Compliance Report” and that the burdens in the proposing release were understated.<sup>29</sup> The commenter stated that completing the compliance report would require extensive collaboration between management, internal audit, and independent public accountants resulting in added hours to perform the validation and evidence gathering of the existing processes necessary to make the assertions in the proposed compliance report.<sup>30</sup> The commenter, however, did not provide a different estimate of the number of hours it would take to complete the compliance report.

In response to these comments, the final rule has been modified from the proposal in ways that may modestly reduce the hour burden. For example, the final rule requires a statement as to whether the broker-dealer was in compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3 as of the end of the most recent fiscal year and, if applicable, a description of any instances of non-compliance with these rules as of the fiscal year end, rather than the proposed assertion that the broker-dealer is in compliance with the financial responsibility rules in all material respects and proposed description of any material non-compliance with the financial responsibility rules.

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<sup>25</sup> See Broker-Dealer Reports, Exchange Act Release No. 64676 (June 15, 2011), 76 FR 37572 (June 27, 2011).

<sup>26</sup> See Broker-Dealer Reports, 76 FR at 37596.

<sup>27</sup> See letter from Kenneth E. Bentsen, Executive Vice President, Securities Industry and Financial Markets Association (“SIFMA”), to the Securities and Exchange Comm’n (Aug. 25, 2011), available at <http://www.sec.gov/comments/s7-23-11/s72311-9.pdf>.

<sup>28</sup> Id.

<sup>29</sup> See letter from Annette Lege, Chief Financial Officer, Van Kampen Funds Inc., Invesco Distributors, Inc., to the Securities and Exchange Comm’n (Aug. 26, 2011), available at <http://www.sec.gov/comments/s7-23-11/s72311-24.pdf>.

<sup>30</sup> Id.

As modified, the final rule no longer requires the broker-dealer to evaluate whether an instance of non-compliance with the financial responsibility rules was material, a component of the proposal that generated significant comment. In addition, the broker-dealer only needs to report instances of non-compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3. In this regard, broker-dealers currently are required to include supporting schedules to their financial statements containing a computation of net capital and the reserve requirement under paragraph (e) of Rule 15c3-3. Consequently, the work required under this pre-existing requirement should provide broker-dealers with the information needed to make the required statements as to whether they were in compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3 as of the fiscal year end.

Given these modifications, the statements in the compliance report concerning the broker-dealer's Internal Control Over Compliance<sup>31</sup> likely will be responsible for the bulk of the hour burden associated with preparing the compliance report. For example, the broker-dealer will need to evaluate whether its Internal Control Over Compliance with the financial responsibility rules was effective during the most recent fiscal year.

The modifications to the final rule discussed above may modestly reduce the hour burden of the final rule as compared to the hour burden that would have resulted from the proposed rule; namely, because a broker-dealer will not need to evaluate whether instances of non-compliance with the financial responsibility rules are material and will only need to report instances of non-compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3. To the extent the proposing release underestimated the burden associated with making the statements in the compliance report about the broker-dealer's Internal Control Over Compliance, the amount of the burden reduction realized through the modifications discussed above is now attributed to the burden associated with the statements about Internal Control Over Compliance. For these reasons, the rule's overall hour burden estimate has been retained without revision.

*External Costs of Engagement of Accountant.* The Commission received comments regarding: (1) the costs of the change from generally accepted auditing standards ("GAAS") to PCAOB standards for the financial report; (2) the costs of the examination of the new compliance report; and (3) the costs of the review of the new exemption report. The comments received with respect to these three areas and the Commission's responses are addressed in detail in each subsection below.

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<sup>31</sup> Internal Control Over Compliance is defined as internal controls that have the objective of providing the broker-dealer with reasonable assurance that non-compliance with the financial responsibility rules will be prevented or detected on a timely basis. Paragraph (d)(3)(ii) of Rule 17a-5, as amended.

Financial Report (including Change from GAAS to PCAOB Standards).

Two commenters stated that the Commission did not address the costs associated with the change from GAAS to PCAOB standards.<sup>32</sup> These costs would affect the external costs of broker-dealers under the PRA burden to the extent the change in standards caused an increase in external accounting fees incurred by broker-dealers. One commenter also stated that the Commission may need to consider the PCAOB's proposed rules before it can make a reasonable estimate, and that transition to PCAOB standards may require substantial revisions to audit programs.<sup>33</sup> Another commenter stated that the economic analysis was "inconclusive" because the PCAOB had not yet established auditing and attestation standards for broker-dealers.<sup>34</sup>

Based on information currently available, including the standards adopted by the PCAOB on October 10, 2013,<sup>35</sup> the move to PCAOB standards for audits of broker-dealer financial reports is not expected to result in significant one-time implementation costs or recurring annual costs. The PCAOB standards for audits of financial reports (financial statements and supporting schedules) generally incorporate concepts and requirements contained within GAAS, thereby minimizing the potential costs to broker-dealer auditors of this change. As such, additional external PRA costs related to the change from GAAS to PCAOB auditing standards were not included.

Compliance Report. The incremental external cost to a carrying broker-dealer of obtaining the independent public accountant's report based on an examination of the proposed compliance report is estimated to be an average incremental cost of approximately \$150,000 per carrying broker-dealer per year.<sup>36</sup> These external costs were included in this collection of information.

One commenter stated that the Commission underestimated the cost

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<sup>32</sup> See, e.g., letter from McGladrey & Pullen, LLP, to the Securities and Exchange Comm'n (Aug. 26, 2011), [available at](http://www.sec.gov/comments/s7-23-11/s72311-18.pdf) <http://www.sec.gov/comments/s7-23-11/s72311-18.pdf>; letter from Kenneth E. Bentsen, Executive Vice President, SIFMA, to the Securities and Exchange Comm'n (Aug. 25, 2011), [available at](http://www.sec.gov/comments/s7-23-11/s72311-9.pdf) <http://www.sec.gov/comments/s7-23-11/s72311-9.pdf>.

<sup>33</sup> See letter from Jeffrey W. Rubin, Chair, Federal Regulation of Securities Comm., American Bar Ass'n, to the Securities and Exchange Comm'n (Sept. 15, 2011), [available at](http://www.sec.gov/comments/s7-23-11/s72311-27.pdf) <http://www.sec.gov/comments/s7-23-11/s72311-27.pdf>.

<sup>34</sup> See letter from Holly Smith, Sutherland Asbill & Brennan LLP, to the Securities and Exchange Comm'n (Aug. 26, 2011), [available at](http://www.sec.gov/comments/s7-23-11/s72311-22.pdf) <http://www.sec.gov/comments/s7-23-11/s72311-22.pdf>.

<sup>35</sup> See Auditing Standard No. 17, Auditing Supplemental Information Accompanying Audited Financial Statements and Related Amendments to PCAOB Standards, PCAOB Release No. 2013-008 (Oct. 10, 2013).

<sup>36</sup> See Broker-Dealer Reports, 76 FR at 37599.



of examining the compliance report.<sup>37</sup> This commenter believed that the auditing costs associated with the compliance examinations were underestimated given that the proposing release contemplated a move from GAAS to PCAOB auditing standards.<sup>38</sup> This commenter stated that the transition may require substantial revisions to independent public accountant audit programs, including implementation of new auditing techniques and processes and the associated training programs and noted that the proposed PCAOB standards were not released until after the publication of the proposing release.<sup>39</sup> Another commenter stated that completing both the compliance reports and exemption reports “will require extensive collaboration between management, internal audit, and the independent public accountants” and that due to the “significant increase in hours,” the proposed amendments have “the potential to double the total current audit fees and have a material impact” on firms.<sup>40</sup> These commenters did not quantify their cost estimates in terms of dollars; nor did they provide data to support their conclusions.

Prior to the amendments, Rule 17a-5 required a broker-dealer to engage an independent public accountant to prepare a material inadequacy report based on, among other things, a review of the accounting system, internal accounting control, and procedures for safeguarding securities of the broker-dealer, including appropriate tests, for the period since the prior examination date. In addition, the accountant was required to review the practices and procedures followed by the broker-dealer in, among other things: (1) making periodic computations of net capital and under paragraph (e) of Rule 15c3-3; (2) making quarterly securities examinations, counts, verifications, and comparisons under Rule 17a-13; and (3) obtaining and maintaining physical possession or control of all fully paid and excess margin securities of customers as required by Rule 15c3-3. Consequently, under the requirements before these amendments relating to a material inadequacy report that are being replaced by the examination of the compliance report, the broker-dealer was required to engage the independent public accountant to review the internal controls, practices, and procedures of the broker-dealer with respect to key elements of the financial responsibility rules.

For these reasons, the average incremental cost of \$150,000 per carrying broker-dealer to obtain the accountant’s report covering the

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<sup>37</sup> See letter from Jeffrey W. Rubin, Chair, Federal Regulation of Securities Comm., American Bar Ass’n, to the Securities and Exchange Comm’n (Sept. 15, 2011), [available at](http://www.sec.gov/comments/s7-23-11/s72311-27.pdf) <http://www.sec.gov/comments/s7-23-11/s72311-27.pdf>.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> See letter from Annette Lege, Chief Financial Officer, Van Kampen Funds Inc., Invesco Distributors, Inc., to the Securities and Exchange Comm’n (Aug. 26, 2011), [available at](http://www.sec.gov/comments/s7-23-11/s72311-24.pdf) <http://www.sec.gov/comments/s7-23-11/s72311-24.pdf>.

compliance report is reasonable. Moreover, as discussed above, the proposed amendments to Rule 17a-5 were adopted with respect to the compliance report with modifications. As modified, the final rule no longer requires the independent public accountant to evaluate whether an instance of non-compliance with the financial responsibility rules is material. In addition, the final rule has been modified from the proposal so that the independent public accountant will not be required to examine a broker-dealer statement that encompassed compliance with all of the financial responsibility rules. Instead, the independent public accountant must examine a statement about compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3.

Given these modifications, the statements in the compliance report concerning the broker-dealer's Internal Control Over Compliance will likely account for the bulk of the work of the independent public accountant and, as noted above, before the amendments, the independent public accountant was required to include internal control within the scope of the audit.

The modifications to the final rule discussed above should modestly reduce the external cost of the final rule as compared to the cost that would have resulted from the proposed rule. Further, elimination of the requirement that the accountant prepare a material inadequacy report will result in some cost savings. While these modifications to the final rule may result in reduced costs, the average estimated incremental cost of \$150,000 per carrying broker-dealer, which may be at the high end of the range of estimated costs, is reasonable. For these reasons, the average estimate of the incremental cost of the accountants' reports covering the compliance report has not changed.

## **9. Payment or Gift**

No payments or gifts were provided to respondents.

## **10. Confidentiality**

Reports filed pursuant to paragraph (a) of Rule 17a-5 are deemed to be confidential pursuant to paragraph (a)(3) of Rule 17a-5.<sup>41</sup> Paragraph (e)(3) of Rule 17a-5, as amended, provides that broker-dealer annual reports filed with the Commission are not confidential, except that if the Statement of Financial Condition is bound separately from the balance of the annual reports, and each page of the balance of the annual reports is stamped "confidential," then the balance of the annual reports shall be deemed confidential to the extent permitted by law.<sup>42</sup> However, under paragraph (c)(2)(iv) of Rule 17a-5, if there are material weaknesses in the broker-dealer's Internal Control Over Compliance as defined by the rule, the independent public

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<sup>41</sup> See 17 CFR 240.17a-5(a)(3).

<sup>42</sup> See paragraph (e)(3) of Rule 17a-5, as amended.

accountant's report based on an examination of certain statements in the broker-dealer's compliance report must be made available for customers' inspection and, consequently, it would not be deemed confidential.<sup>43</sup> In addition, paragraph (c)(2)(i) of Rule 17a-5 requires a broker-dealer to furnish to its customers annually a balance sheet with appropriate notes prepared in accordance with U.S. generally accepted accounting principles ("GAAP"), which must be audited if the broker-dealer is required to file audited financial statements with the Commission.<sup>44</sup> With respect to the other information collected under the amendments, a broker-dealer can request the confidential treatment of the information.<sup>45</sup> If such a confidential treatment request is made, the information will be treated as confidential to the extent permitted by law.<sup>46</sup>

## **11. Sensitive Questions**

Not applicable. No inquiries of a sensitive nature were made. This information collection does not collect any personal identifiable information.

## **12. Burden of Information Collection**

### Requirement to Prepare and File FOCUS Reports: Paragraph (a) of Rule 17a-5

Commission staff estimates that each FOCUS Report and annual audited financial statement required to be filed under Rule 17a-5 takes approximately 12 hours to prepare and file. This estimate is based on Commission staff's history and experience reviewing these filings and communicating with broker-dealers regarding the reports. At the end of calendar year 2011, approximately 513 firms cleared transactions or carried customer accounts and therefore 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 financial statements. 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  $(27,405 \text{ annual responses} \times 12 \text{ hours} = 328,860 \text{ hours})$ .

### Requirement to File Supplemental Reports: Paragraph (k) of Rule 17a-5

As previously explained, paragraph (k) of Rule 17a-5 requires broker-dealers that compute certain capital charges in accordance with Appendix E to Exchange Act Rule 15c3-1<sup>47</sup> to file supplemental reports with the Commission regarding their internal risk management

<sup>43</sup> See paragraph (c)(2)(iv) of Rule 17a-5, as amended.

<sup>44</sup> See 17 CFR 240.17a-5(c)(2)(i).

<sup>45</sup> See 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available at <http://www.sec.gov/foia/howfo2.htm#privacy>.

<sup>46</sup> See, e.g., 15 U.S.C. 78x (governing the public availability of information obtained by the Commission); 5 U.S.C. 552 et seq.

controls. The Commission currently estimates that approximately nine broker-dealers will elect to use Appendix E to Rule 15c3-1 to compute certain of their capital charges (as of September 2012, six broker-dealers have elected to use Appendix E). The average amount of time necessary to prepare and file the required additional monthly reports by each firm 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. This estimate is based on Commission staff's history and experience reviewing these filings and communicating with broker-dealers regarding the reports. Consequently, the total additional annual reporting burden for these nine broker-dealers is approximately 1,080 hours  $((48 + 32 + 40) \times 9 = 1,080)$ .

Requirement to File Compliance Report or Exemption Report: Paragraphs (d)(3)–(4) of Rule 17a-5

As of December 31, 2011, 4,709 broker-dealers filed FOCUS Reports with the Commission. Of these, 4,417 broker-dealers claimed exemptions from Rule 15c3-3. Consequently, there are approximately 292 carrying broker-dealers  $(4,709 - 4,417 = 292)$  that must comply with Rule 15c3-3 and therefore must file compliance reports. It will take a carrying broker-dealer approximately 60 hours to prepare the compliance report, for an annual industry-wide reporting burden of approximately 17,520 hours  $(292 \text{ respondents} \times 60 \text{ hours} = 17,520 \text{ hours})$ . It will take a broker-dealer claiming an exemption from Rule 15c3-3 approximately 7 hours to complete the exemption report, for an annual industry-wide reporting burden of approximately 30,919 hours  $(4,417 \text{ respondents} \times 7 \text{ hours} = 30,919 \text{ hours})$ .

Requirement to File Annual Audited Reports with SIPC: Paragraph (d)(6) of Rule 17a-5

According to SIPC, as of March 31, 2012, 217 broker-dealers claimed exemptions from SIPC membership. Therefore, 4,492 broker-dealers  $(4,709 - 217 = 4,492)$  are members of SIPC. It will take a broker-dealer approximately 30 minutes to file the annual reports with SIPC, for an industry-wide annual disclosure burden of 2,246 hours per year  $(4,492 \text{ broker-dealers} \times 1/2 \text{ hour} = 2,246 \text{ hours})$ .

Requirement to File Annual Reports: Paragraph (d)(1)(ii) of Rule 17a-5

Paragraph (d)(1)(ii) of Rule 17a-5 was amended to require that a copy of a DEA's written approval to change a broker-dealer's fiscal year end must be sent to the Commission's principal office in Washington, DC, in addition to the regional office of the Commission for the region in which the broker-dealer has its principal place of business. Based on the number of copies of approvals received by the Commission and staff experience in the application of Rule

<sup>47</sup> Generally, a broker-dealer meeting certain conditions, including the existence of strong internal risk management practices, may apply to the Commission for authorization to use the alternative method for computing capital contained in Appendix E to Rule 15c3-1, thereby permitting the firm to utilize the mathematical modeling methods it uses to manage its own business risk, including value-at-risk models and scenario analysis, to compute deductions from net capital for market risks and for credit risks arising from OTC derivatives transactions.

17a-5, an estimated 75 broker-dealers will receive approval each year to change their fiscal year end. It will take the broker-dealer approximately 10 minutes to copy and send an additional copy of the approval to the Commission's principal office in Washington, DC for a total industry-wide annual hour burden of approximately 8 hours.

Requirement to File Statement Regarding Independent Public Accountant: Paragraph (f)(2) of Rule 17a-5

Paragraph (f)(2) of Rule 17a-5 was amended to revise the statement regarding identification of a broker-dealer's independent public accountant that a broker-dealer must file each year with the Commission and its DEA (except that if the engagement is of a continuing nature, no further filing is required). It will take a carrying or clearing broker-dealer approximately ten hours on a one-time basis to renegotiate its agreement with its accountant, amend its statement regarding its accountant, and file the new statement with the Commission. The one-time burden for all carrying or clearing broker-dealers is approximately 5,130 hours (513 carrying or clearing broker-dealers  $\times$  10 hours = 5,130 hours)<sup>48</sup> and the one-time burden for all broker-dealers that neither carry customer accounts nor clear transactions is approximately 8,392 hours (4,196 non-carrying and non-clearing broker-dealers  $\times$  2 hours = 8,392 hours),<sup>49</sup> for a total industry-wide reporting burden of approximately 13,522 hours on a one-time basis (5,130 hours + 8,392 hours = 13,522 hours).

### **13. Costs to Respondents**

The estimated cost associated with the independent public accountant's examination of the compliance report will be an average incremental cost of approximately \$150,000 per carrying broker-dealer per year, for an industry-wide annual reporting cost of approximately \$43,800,000 per year (\$150,000  $\times$  292 carrying broker-dealers = \$43,800,000). The cost associated with the independent public accountant's review of the exemption report will be approximately \$3,000 per non-carrying broker-dealer per year, for a total industry-wide annual reporting cost of approximately \$13,251,000 (4,417 non-carrying broker-dealers  $\times$  \$3,000 = \$13,251,000) per year.

### **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 examinations  $\times$  1.5 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 hours  $\times$  \$50 per hour). These estimates have been computed based on the GSA, Guide to Estimating Reporting Costs (1973).

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<sup>48</sup> This amount is annualized over a three-year period, resulting in an annual burden of 3.3 hours per carrying or clearing broker-dealer and an industry-wide annual burden of 1,710 hours.

<sup>49</sup> This amount is annualized over a three-year period, resulting in an annual burden of 0.66 hours per non-carrying and non-clearing broker-dealers and an industry-wide annual burden of 2,797 hours.

**15. Changes in Burden**

The change in burden is due to the adopted amendments, which results in an increase of 64,220 hours. The change in external costs due to the amendments would be approximately \$57,051,000 per year ( $\$43,800,000 + \$13,251,000 = \$57,051,000$ ).

**16. Information Collection Planned for Statistical Purposes**

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

**17. Display of OMB Approval Date**

The Commission requests authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

**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.