

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17Ab2-2

A. JUSTIFICATION

1. Necessity of Information Collection

Legal and Administrative Requirements

i. Title VII of Dodd-Frank Act

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) added new provisions to the Securities Exchange Act of 1934 (“Exchange Act”) that require clearing agencies that clear security-based swaps (“security-based swap clearing agencies”) to register with the Securities and Exchange Commission (“Commission”) and require the Commission to adopt rules with respect to security-based swap clearing agencies.

Specifically, new Section 17A(j) of the Exchange Act requires the Commission to adopt rules governing security-based swap clearing agencies. New Section 17A(i) of the Exchange Act also gives the Commission authority to promulgate rules that establish standards for security-based swap clearing agencies. Compliance with any such rules is a prerequisite to the registration of a clearing agency with the Commission and is also a condition to the maintenance of that security-based swap clearing agency’s continued registration.

ii. Payment, Clearing, and Settlement Supervision Act of 2010

Title VIII of the Dodd-Frank Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”), establishes an enhanced supervisory and risk control system for systemically important clearing agencies and other financial market utilities (“FMUs”). It provides that the Commission may prescribe regulations containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for any designated clearing entities it regulates. On July 11, 2011, the FSOC published a final rule concerning its authority to designate FMUs as systemically important and on July 18, 2012, the FSOC designated as systemically important the following registered clearing agencies: Chicago Mercantile Exchange (“CME”), The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), ICE Clear Credit LLC, National Securities Clearing Corporation (“NSCC”), and The Options Clearing Corporation (“OCC”). Congress recognized in the Clearing Supervision Act that the operation of multilateral payment, clearing or settlement activities may reduce risks for clearing participants and the broader financial system, while at the same time creating new risks that require multilateral payment, clearing or settlement activities to be well-designed and operated in a safe and sound manner. The Clearing Supervision Act is designed, in part, to provide a regulatory framework to help deal with such risk management issues, which is generally consistent with the Exchange Act

requirement that clearing agencies be organized in a manner so as to facilitate prompt and accurate clearance and settlement, safeguard securities and funds and protect investors.

iii. Section 17A of Exchange Act

In addition to the new authority provided to the Commission under Titles VII and VIII of the Dodd-Frank Act, the Commission has existing authority over clearing agencies under the Exchange Act. For example, entities are required to register with the Commission pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 prior to performing the functions of a clearing agency. Under this registration system, the Commission is not permitted to grant registration unless it determines that the rules and operations of the clearing agency meet the standards set forth in Section 17A. Specifically, Sections 17A(b)(3)(A)-(I) identify determinations that the Commission must make about the rules and structure of a clearing agency prior to granting registration. If a clearing agency is granted registration, the Commission oversees the clearing agency to facilitate compliance with the Exchange Act through the rule filing process for self-regulatory organizations (“SROs”) and through on-site examinations by Commission staff. Section 17A also gives the Commission authority to adopt rules for clearing agencies as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act and prohibits a registered clearing agency from engaging in any activity in contravention of these rules and regulations.

Rule Governing Determinations Regarding Status as a Covered Clearing Agency

The Commission is proposing a new rule that would establish procedures for the Commission to make a determination, either of its own initiative or upon application by any clearing agency or member of a clearing agency, whether a registered clearing agency should be considered a “covered clearing agency” and thereby be subject to the requirements of proposed Rule 17Ad-22(e).¹ The Commission believes that the Rule would provide the Commission with the flexibility necessary to achieve the goals of Section 17A of the Exchange Act, Title VII of the Dodd-Frank Act, and the Clearing Supervision Act, in light of the ever-changing nature of the U.S. securities markets, including the nature and character of the participants in the market and the products required to be cleared and settled.

Proposed Rule 17Ab2-2 is necessary to ensure that a registered clearing agency not otherwise meeting the definition of either a designated clearing agency or a complex risk profile clearing agency can nonetheless be subject to the requirements for covered clearing agencies in proposed Rule 17Ad-22(e) upon a determination made by the Commission. Such a mechanism is necessary to ensure that the Commission is appropriately able to respond to registered clearing agencies that raise systemic risk concerns justifying the application of the requirements under Rule 17Ad-22(e).

There is a collection of information associated with Rule 17Ab2-2. The information collected is necessary to carry out the mandates of the Exchange Act, as amended by the Dodd-

¹ See Exchange Act Release 34-71699 (March 12, 2014), 79 FR 29507 (May 22, 2014) (“2014 Proposing Release”), available at <http://www.sec.gov/rules/proposed/2014/34-71699.pdf> (herein after “2014 Proposing Release”).

Frank Act.

The statutory basis for proposing Rule 17Ab2-2 is as follows: Exchange Act Section 17A, 15 U.S.C. 78q-1, and Section 805 of the Clearing Supervision Act, 12 U.S.C. 5464.

2. Purpose and Use of the Information Collection

Proposed Rule 17Ab2-2 would establish a process for Commission determinations regarding whether a registered clearing agency should be considered a covered clearing agency. Because such determinations may be made upon the request of a clearing agency, respondent clearing agencies would have the burden of preparing such requests for submission to the Commission. Upon receipt of such a request, the Commission would use the information provided in the submission to make a determination under Rule 17Ab2-2 regarding a registered clearing agency's status as a covered clearing agency.

3. Consideration of Information Technology

Proposed Rule 17Ab2-2 does not specify the manner in which a registered clearing agency, or a member of a registered clearing agency, is required to submit a request for determination as to the status of the registrant as a covered clearing agency. While the Commission would accept such a request for determination as a paper (hardcopy) document, the Commission believes that clearing agencies would utilize various computer information systems to identify and compile the necessary information and could submit such an information and request for a determination electronically.

4. Duplication

Section 712(a)(2) of the Dodd-Frank Act provides that, before commencing any rulemaking regarding, among other things, clearing agencies with regard to security-based swaps, the Commission must consult and coordinate with the Commodity Futures Trading Commission ("CFTC") and other prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible. The Commission staff and the CFTC staff have consulted and coordinated with one another regarding their respective Commissions' rules regarding clearing agencies as mandated by the Dodd-Frank Act. The Commission staff has also consulted and coordinated with other prudential regulators. The Rule does not duplicate information required to be collected elsewhere.

5. Effect on Small Entities

The Rule would not affect any small entities.

6. Consequences of Not Conducting Collection

The Dodd-Frank Act enacted sweeping reforms in the financial system, including reforms regarding FMUs such as clearing agencies. It also charged the Commission with significant duties in carrying out these reforms. The consequences of not conducting the collection of

information pursuant to the Rule would significantly impair the Commission’s ability to carry out its statutory obligations under the Exchange Act, as amended by Titles VII and VIII of the Dodd-Frank Act.

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

The information collection is consistent with the general information collection guidelines imposed for public protection as set forth in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The Commission has issued a release soliciting comment on the “collection of information” requirements and associated paperwork burdens.² Comments for the Proposing Release were due by May 27, 2014.

9. Payment or Gift

Not applicable.

10. Confidentiality

The Commission staff does not anticipate that it will receive confidential information in response to this collection of information. To the extent that the Commission receives confidential information pursuant to the collection of information associated with the Rule, the Commission expects such information would be kept confidential, subject to the provisions of applicable law.³

11. Sensitive Questions

The collection of information does not expressly include Personally Identifiable Information (“PII”). At the same time, however, Commission staff understands that there may be instances when certain information (including, but not limited to, a person’s name, email, phone number, or address) could be provided in an application seeking a determination by the Commission. However, Commission staff does not envision any circumstance in which a social security number would be provided pursuant to any of the collections of information.

² See Exchange Act Release No. 34–71699 (Mar. 12, 2014), 79 FR 16866 (Mar. 26, 2014) (“Proposing Release”), available at <http://www.sec.gov/rules/proposed/2014/34-71699.pdf>.

³ See, e.g., 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. See 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. See 5 U.S.C. 552(b)(8).

Furthermore, any such information would not be collected, stored, or used by the Commission, nor would it be retrievable on a Commission system or database. As such, we believe that the treatment of any PII with the collection of information associated with the proposed rule, once it is ultimately adopted, is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

12. Burden of Information Collection

The Commission believes that Rule 17Ab2-2 would impose a PRA burden on registered clearing agencies that seek a determination from the Commission regarding the clearing agency's status as a covered clearing agency. The Commission initially estimates that two registered clearing agencies or their members on their behalf will apply for a Commission determination, or may be subject to a Commission-initiated determination, regarding whether the registered clearing agency is a covered clearing agency, whether a registered clearing agency is involved in activities with a more complex risk profile, or whether a covered clearing agency is systemically important in multiple jurisdictions.

The Commission estimates that respondent clearing agencies would incur a one-time burden of approximately 12 hours to draft and review a determination request submitted to the Commission.⁴

In summary, the Commission estimates that, over a three-year period, the total reporting burden to comply with Rule 17Ab2-2 would be 12 hours, or 4 hours per year when annualized over three years.⁵ The reporting burden per respondent would be approximately 6 hours, or approximately 2 hours per year when annualized over three years.⁶

13. Costs to Respondents

Registered clearing agencies seeking a determination from the Commission regarding the clearing agency's status as a covered clearing agency may require the agency to hire outside counsel. In such instances where a clearing agency seeks the assistance of outside counsel, the Commission estimates that Rule 17Ab2-2 would impose a one-time cost on all respondent clearing agencies. The Commission estimates this one-time cost on all respondents would total \$4,800.

⁴ This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Staff Attorney for 4 hours)) = 6 hours x 2 respondent clearing agencies = 12 hours.

⁵ 2 respondents * (6 hours (Year 1 burden) + 0 hours (Year 2 burden) + 0 hours (Year 3 burden) = 12 hours (estimated total burden over 3 years) ÷ 3 years = 4 hours.

⁶ 12 hours (total burden over three years) ÷ 2 respondents = 6 hours (estimated total burden over 3 years) ÷ 3 years = 2 hours.

In summary, the Commission estimates that should respondent clearing agencies decide to hire outside counsel to seek a determination from the Commission in accordance with Rule 17Ab2-2, the one-time cost associated with hiring outside counsel would be approximately \$4,800 or \$1,600 per year when annualized over three years.⁷ The total labor cost per respondent would be approximately \$2,400 or \$800 when annualized over three years.⁸

14. Costs to Federal Government

Not applicable.

15. Changes in Burden

Not applicable. Proposed rule 17Ab2-2 is a new rule.

16. Information Planned for Statistical Purposes

Not applicable.

17. Display of OMB Approval Date

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

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The collection of information does not employ statistical methods.

⁷ This figure was calculated as follows: (Outside Counsel for 6 hours at \$400 per hour) x 2 registered clearing agencies = \$4,800 ÷ 3 years = \$1,600.

⁸ \$4,800 (total labor cost over three years) ÷ 2 respondents = \$2,400 ÷ 3 years = \$800.