

**Supporting Statement
for the Paperwork Reduction Act Information Collection Submission for
Rule 17a-3**

A. JUSTIFICATION

1. Information Collection Necessity

All brokers and 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, brokers and dealers (“broker-dealers”). Exchange Act Section 17(a)(1) provides in pertinent part:

“[all members of a national securities exchange and registered brokers and 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].”

To standardize recordkeeping practices throughout the industry, the Commission, in 1939, adopted Rule 17a-3,³ which established minimum standards with respect to business records that broker-dealers must create.⁴ Rule 17a-3 requires broker-dealers to make and keep current certain records relating to their financial condition, communications, customer information, and employees.

The Commission adopted certain Amendments to Rule 17a-3 on October 25, 2001 (the “2001 Amendments”), in part as a response to the National Securities Market Improvement Act of 1996 (“NSMIA”).⁵ NSMIA prohibits any State from establishing books and records rules for broker-dealers that differ from, or are in addition to, the Commission's rules, and also requires the Commission to consult periodically with the States concerning the adequacy of the Commission's books and records rules.⁶ The 2001 Amendments expanded the types of records that broker-dealers must create to include additional records necessary for State examiners to

¹ 15 U.S.C. § 78q(a).

² 15 U.S.C. § 78w(a).

³ 17 CFR 240.17a-3.

⁴ Exchange Act Release No. 2304 (Nov. 13, 1939).

⁵ Pub.L.No. 104-290, 110 Stat. 3416 (1996).

⁶ Exchange Act Section 15(h), 15 U.S.C. § 78o(h).

review for sales practice violations at office locations, and were designed to assist regulators, particularly State securities regulators, in conducting effective examinations.⁷

To aggregate the entire burden of Rule 17a-3 into one information collection (and OMB control number), the Commission is moving⁸ the annual burden hours for paragraph (a)(16) of Rule 17a-3 into this information collection.

2. Information Collection Purpose and Use

The purpose of requiring broker-dealers to create the records specified in Rule 17a-3 is to enhance regulators' ability to protect investors. These records and the information contained therein will be and are used by examiners and other representatives of the Commission, State securities regulatory authorities, and the self regulatory organizations (e.g., FINRA, CBOE, etc.)("SROs") to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations.

If broker-dealers were not required to create these records, Commission, SRO, and state examiners would be unable to conduct effective and efficient examinations to determine whether broker-dealers were complying with relevant laws, rules, and regulations.

3. Consideration Given to Information Technology

The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens that result from Rule 17a-3. Broker-dealers are not prevented by Rule 17a-3 from using computers or other mechanical devices to generate the records required under the Rule.

4. Duplication

Rule 17a-3 was drafted and amended to codify SRO record-keeping requirements and the record-keeping practices of prudent broker-dealers. Because most broker-dealers already create many of the records required by Rule 17a-3 either voluntarily or pursuant to SRO requirements, no duplication of such information is apparent.

5. Effect on Small Entities

The books and records required under Rule 17a-3 are normally created by small broker-dealers. Since small broker-dealers utilize processes that are more manual in nature, while large broker-dealers use more automated processes, the Commission has estimated some of the time factors for small broker-dealers to be higher, as described below.

⁷ See Exchange Act Release No. 37850 (October 22, 1996), 61 FR 55593 (October 28, 1996) ("Proposing Release").

⁸ The burden estimate for paragraph (a)(16) of Rule 17a-3 was in a separate information collection (OMB control number 3235-0506) with paragraph (b)(11) of Rule 17a-4. Paragraph (b)(11) of Rule 17a-4 is being moved to the information collection for Rule 17a-4.

6. Consequences of Not Conducting Collection

The information required to be collected and recorded under Rule 17a-3 allows the Commission, State securities regulatory authorities, and the SROs to determine whether broker-dealers are in compliance with Commission, State, and SRO anti-fraud and anti-manipulation rules, financial responsibility rules, and other rules and regulations. If a broker-dealer does not make these records, or it makes these records less frequently, the level of investor protection will be reduced. The records a broker-dealer is required to make under Rule 17a-3 are, for the most part, essential to the successful operation of a securities firm, and failure to make the records on a current basis would likely cause the broker-dealer to experience operational difficulties.

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

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

8. Consultations Outside the Agency

The staff of the Commission regularly communicates with and requests the views of staff of the Securities Industry Association, State securities administrators, the New York Stock Exchange, and the National Association of Securities Dealers, Inc. concerning the principal requirements of Rule 17a-3. The Commission staff also communicates with broker-dealers on a continuous basis. None of these organizations have raised any concerns regarding Rule 17a-3. 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 gifts or payments will be given to respondents.

10. Confidentiality

The records required by Rule 17a-3 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 anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (“PII”).

12. Information Collection Burden

All registered broker-dealers are subject to Rule 17a-3. As of April 1, 2016, there were 4,104 broker-dealers registered with the Commission. While recordkeeping requirements will vary based on the size and complexity of the broker-dealer, the Commission estimates that one hour a day is the average amount of time needed by a broker-dealer to comply with the overall requirements of Rule 17a-3, in addition to the burdens described below. The number of working days per year is 249, so the total estimated burden for broker-dealers would be 1,021,896 hours per year.⁹ These hours are recordkeeping burdens.

Additionally, paragraphs (a)(12) and (a)(19) of Rule 17a-3 require that a broker-dealer create certain records regarding its associated persons.¹⁰ The Commission estimates that each broker-dealer spends, on average, approximately 30 minutes each year to ensure that it is in compliance with these requirements, resulting in a total annual compliance burden of about 2,052 hours.¹¹ These hours are recordkeeping burdens.

Paragraphs (a)(20)–(22) of Rule 17a-3 require broker-dealers to make additional records regarding their compliance with applicable regulations and create lists of those personnel responsible for establishing compliance policies and procedures and those able to explain the information in the broker-dealer's records.¹² The Commission estimates that, on average, each broker-dealer will spend 10 minutes each year to ensure compliance with these requirements, yielding a total burden of about 684 hours.¹³ These are recordkeeping burdens.

Estimating the paperwork burden associated with paragraph (a)(17) requires a more complicated formula to calculate the compliance burden because it is based on the number of customer accounts for which a broker-dealer must collect this information as opposed to the number of broker-dealers. In addition, the Commission understands that large broker-dealers have more automated processes to collect and create these records than smaller broker-dealers, and has factored this into its estimates.

⁹ 4,104 (the number of broker-dealers as of April 1, 2016) multiplied by 1 hour per day multiplied by 249 working days equals 1,021,896 hours.

¹⁰ These records include; 1) all agreements pertaining to the associated person's relationship with the broker-dealer and a summary of each associated person's compensation arrangement (17 CFR 240.17a-3(a)(19)(ii)), 2) a record delineating all identification numbers relating to each associated person (17 CFR 240.17a-3(a)(12)(ii)), 3) a record of the office at which each associated person regularly conducts business (17 CFR 240.17a-3(a)(12)(iii)), and 4) a record as to each associated person listing transactions for which that person will be compensated (17 CFR 240.17a-3(a)(19)(i)).

¹¹ (4,104 broker-dealers x 30 minutes) / 60 minutes.

¹² Specifically, paragraphs (a)(20)–(22) of Rule 17a-3 require that a broker-dealer make records: (1) indicating that it has either complied with or adopted procedures designed to establish compliance with applicable regulations of certain securities regulatory authorities (17 CFR 240.17a-3(a)(20)); (2) listing persons who can explain the broker-dealer's records (17 CFR 240.17a-3(a)(21)); and (3) that list principals responsible for establishing compliance policies and procedures (17 CFR 240.17a-3(a)(22)).

¹³ (4,104 broker-dealers x 10 minutes) / 60 minutes.

As of the end of 2015, 4,087 broker-dealers that filed the FOCUS Schedule I Reports on December 31, 2015 reported that they maintained a total of 126,458,378 customer accounts. Forty-seven of those broker-dealers reported that they maintained over 100,000 accounts each (for purposes of this Supporting Statement, the “Large Broker-dealers”), and the remaining 4,040 broker-dealers maintained less than 100,000 customer accounts each (for purposes of this Supporting Statement, the “Small Broker-dealers”). The Large Broker-dealers reported that they held a total of 124,794,946 customer accounts (or 98.7% of the total customer accounts reported), and the Small Broker-dealers reported that they held the remaining 1,663,432 customer accounts (or 1.3% of the total customer accounts reported). The Commission estimates that approximately 27.7% of the 126,458,378 total customer accounts would be excluded from the provisions of 17a-3(a)(17) because the accounts are either (i) not accounts of natural persons, (ii) inactive, or (iii) accounts for which the broker-dealer does not have a suitability requirement.¹⁴ Accordingly, the total number of active customer accounts regarding which broker-dealers would need to provide customers with account information is approximately 91,429,407 (90,226,746 held by Large Broker-dealers and 1,202,661 held by Small Broker-dealers).

The Commission estimates that broker-dealers will be required to provide customer account information to approximately 30,476,469 customers per year to comply with paragraph (a)(17)(i)(B)(I).¹⁵ Approximately 30,080,275 will be customers of Large Broker-dealers,¹⁶ and approximately 396,194 will be customers of Small Broker-dealers.¹⁷ Further, the Commission estimates that this will take Large Broker-dealers an average of 1½ minutes per account, or 752,007 hours per year,¹⁸ and that it will take Small Broker-dealers an average of 7 minutes per account, or 46,223 hours per year.¹⁹ Thus, the estimated total burden on the industry to comply with the paragraph (a)(17)(i)(B)(I) requirement provide account information to customers when an account is opened and periodically thereafter is 798,230 hours per year.²⁰ These hours are recordkeeping and third party disclosure burdens, with an assumption that the burden is split evenly between the two burden types.

If a customer provides a broker-dealer with updated account record information, the broker-dealer must, pursuant to paragraphs (a)(17)(i)(B)(2) and (3), update the customer’s account information and send the revised account information to the customer to verify its accuracy.²¹ The Commission estimates that approximately 20% of the customers from whom information is requested will update their account records, resulting in 6,095,294 updated

¹⁴ See Rule 17 CFR 240.17a-3(a)(17)(i)(D). The Commission arrived at this number using estimates provided by the firms (in their comment letters and otherwise) as to how many of their accounts would fit in to one or more of these categories.

¹⁵ (91,429,407 x (1 every 3 years)).

¹⁶ 30,476,469 account records x 98.7% = 30,080,275 account records, or 640,006 account records per Large Broker-dealer (30,080,275 account records / 47).

¹⁷ 30,476,469 account records x 1.3% = 396,194, or 98 account records per Small Broker-dealer (396,194 / 4040).

¹⁸ (30,080,275 x 1.5 minutes / 60 minutes) = 752,007 hours per year.

¹⁹ (396,194 x 7 minutes / 60 minutes) = 46,223 hours per year.

²⁰ (752,007 hours + 46,223 hours) = 798,230 hours.

²¹ 17 CFR 240.17a-3(a)(17)(B)(2) and (3).

account records each year.²² In addition, the Commission estimates that 5% of active customer accounts, or 4,571,470,²³ will initiate changes to their account records on a yearly basis, just as they do now, with no prompting from any account record mailing. The total number of updates, therefore, will be 10,666,764.²⁴ The Commission estimates that it would take, on average, 5 minutes for Large Broker-dealers to update each account and 10 minutes²⁵ for Small Broker-dealers to update each account, resulting in an additional burden of 900,453 hours per year (877,341 for Large Broker-dealers and 23,113 for Small Broker-dealers) to update account record information and provide the new account information to customers as required by paragraphs (a)(17)(i)(B)(2) and (3).²⁶ These hours are recordkeeping and third party disclosure burdens, with an assumption that the burden is split evenly between the two burden types.

Paragraph (a)(23) of Rule 17a-3, requires 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 Commission estimates that a broker-dealer spends, on average, approximately 100 hours of employee resources to comply with this requirement to ensure its market, credit, and liquidity risk controls are documented. Based on FOCUS Report data, as of December 31, 2015, the Commission estimates there are approximately 462 broker-dealers that are subject to paragraph (a)(23).²⁷ Therefore, the Commission estimates that the total one-time recordkeeping burden to broker-dealers will be approximately 46,200 hours, or 15,400 hours amortized over three years.²⁸

In addition to the one-time hour burden, based on similar collections of information requiring the documentation of risk management controls, broker-dealers required to comply with paragraph (a)(23) likely will incur annual hour burdens.²⁹ The Commission estimates that a

²² $(30,476,469 \times 20\%) = 6,095,294.$

²³ $(91,429,407 \times 5\%) = 4,571,470.$

²⁴ $(6,095,294 + 4,571,470) = 10,666,764.$

²⁵ This estimate takes into account the 1½ and 7 minutes it would take Large and Small Broker-dealers, respectively, to provide this updated account information to customers, and the 3.5 minutes and 3 minutes it would take Large and Small Broker-dealers, respectively, to receive the returned data and input any changes into the account record. The estimated total minutes for updating and providing this information to customers of 5 minutes for Large Broker-dealers and 10 minutes for Small Broker-dealers were taken from a comment letter to the 2001 Amendments.

²⁶ $((10,666,764 \text{ account records} \times 98.7\%) \times (5 \text{ minutes} / 60 \text{ minutes})) + ((10,666,764 \text{ account records} \times 1.3\%) \times (10 \text{ minutes} / 60 \text{ minutes})).$

²⁷ This estimate is based on the number of firms that have \$1,000,000 in credits or \$20,000,000 in capital.

²⁸ $462 \text{ broker-dealers} \times 100 \text{ hours} = 46,200 \text{ hours.}$ For purposes of this supporting statement, the one-time burden annualized over the three year approval period is 15,400 $(46,200/3)$, with an average hour burden per firm of 33.333 hours $(15,400/462 \text{ firms}).$

²⁹ See Risk Management Controls for Brokers or Dealers with Market Access; Final Rule, Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69792, 69815 (Nov. 15, 2010). See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release 68071, 77 FR at 70295 and 70297.

broker-dealer spends approximately 45 hours per year to ensure its compliance with Paragraph (a)(23), for an annual recordkeeping burden on the industry of 20,790 hours.³⁰

To aggregate the entire burden of Rule 17a-3 into one information collection (and OMB control number), the Commission is moving the annual burden hours for paragraph (a)(16) of Rule 17a-3 into this information collection. Paragraph (a)(16) of Rule 17a-3 requires any broker-dealer that sponsors an internal broker-dealer system to make and keep current certain records relating to such system. The Commission estimates that paragraph (a)(16) of Rule 17a-3 imposes an annual burden of 27 hours per year per internal broker-dealer system to create the requisite records. The Commission estimates that there are approximately 150 internal broker-dealer systems,³¹ resulting in an annual recordkeeping burden of 4,050 hours.³²

³⁰ 462 broker-dealers x 45 hours = 20,790 hours. The 45 per hour annual estimate is based on a similar collection of information. See Risk Management Controls for Brokers or Dealers with Market Access; Final Rule, Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69792, 69815 (Nov. 15, 2010).

³¹ The Commission believes that most over-the-counter (“OTC”) market makers maintain an internal broker-dealer system. In 2010, the Commission estimated that there are approximately 150 OTC market makers responsible for more than 1% of the trading volume in an exchange-traded security. See Commission, Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 602 of Regulation NMS (Nov. 7, 2013), *available at* <http://www.reginfo.gov/public/do/DownloadDocument?documentID=431473&version=1>.

³² 27 hours x 150 internal broker-dealer systems = 4,050 hours.

In total, the aggregate burden attributed to Rule 17a-4 is 2,763,566 hours, broken down as follows:

Summary of Hourly Burdens

| Name of Information Collection | Type of Burden | Number of Respondents | Annual Responses per Respondent | Hourly Burden per Response | Annual Burden for all Respondents |
|---|--|-----------------------|---------------------------------|----------------------------|-----------------------------------|
| Records to be Made by Certain Exchange Members, Brokers and Dealers | Recordkeeping | 4104 | 249 | 1 | 1,021,896 |
| Rule 17a-3(a)(12) & (19) | Recordkeeping | 4104 | 1 | 0.50 | 2,052 |
| Rule 17a-3(a)(20-22) | Recordkeeping | 4104 | 1 | 0.1666 | 684 |
| Rule 17a-3(a)(17)(i)(B)(1) - Large BD | Recordkeeping & Third Party Disclosure | 47 | 640,006 | 0.0250 | 752,007 |
| Rule 17a-3(a)(17)(i)(B)(1) - Small BD | Recordkeeping & Third Party Disclosure | 4040 | 98 | 0.1166 | 46,233 |
| Rule 17a-3(a)(17)(i)(B)(2) & (3) - Large BD | Recordkeeping & Third Party Disclosure | 47 | 224,002 | 0.0833 | 877,341 |
| Rule 17a-3(a)(17)(i)(B)(2) & (3) - Small BD | Recordkeeping & Third Party Disclosure | 4040 | 34.32376 | 0.1666 | 23,113 |
| Rule 17a-3(a)(23) Part I | Recordkeeping | 462 | 1 | 33.33 | 15,400 |
| Rule 17a-3(a)(23) Part II | Recordkeeping | 462 | 1 | 45 | 20,790 |
| Rule 17a-3(a)(16) | Recordkeeping | 27 | 1 | 150 | 4,050 |

13. Costs to Respondents

Ongoing operation and maintenance costs include the cost of postage to provide customers with account information, and costs for equipment and systems development. The Commission estimates that under Rule 17a-3(a)(17), approximately 41,143,233 customers (30,476,469 account records³³ + 6,095,294 updated account records³⁴ + 4,571,470 updated

³³ This figure is based on the number of active customer accounts (91,429,407) divided by 3 since the broker-dealer must send each customer a copy of his or her account record information once every three years.

³⁴ This figure is based on the number of active customer accounts that receive their account record (30,476,469) times .20, since the Commission estimates that 20% of customers that receive their account record will update their account record information.

account records³⁵) will need to be provided with information regarding their account on a yearly basis. Firms may include this information with other communications sent to customers, for instance in customer account statements. In response to requests for comment relating to the 2001 Amendments, those firms that provided estimates of postage costs indicated that postage costs to provide customers with account record information would be about \$0.244 per item mailed.³⁶ However, postage costs have increased since that time. The current estimate for postage costs is \$0.327.³⁷ Consequently, the Commission estimates that the postage costs associated with providing 41,143,233 customers with copies of their account record information would be approximately \$13,577,267 per year (41,143,233 x \$0.33). These costs are recordkeeping and third party disclosure burdens, with an assumption that the burden is split evenly between the two burden types.

At the time of the 2001 Amendments Large Broker-dealers that provided cost information estimated that their ongoing, yearly costs for equipment and systems development resulting from Rule 17a-3 would be approximately \$0.25 per customer account. The Commission believes that the additional cost for smaller broker-dealers is included in the increased hourly burden costs delineated above.³⁸ However costs for equipment and systems development have increased since 2001. Consequently, the Commission believes that the total ongoing equipment and systems development costs relating to Rule 17a-3 for the industry would be about \$30,677,094 per year (90,226,746 active customer accounts held by Large Broker-dealers x \$0.34³⁹). This cost is a recordkeeping burden.

With respect to the amendment to paragraph (a)(23) to Rule 17a-3, a broker-dealer is required to document its liquidity, credit, and market risk management controls, if it has established such controls. These broker-dealers may incur one-time startup costs to hire outside counsel to review the documented controls to ensure the broker-dealer is meeting the requirements of the rule. Based on staff experience with similar reviews, the Commission estimates that 462 broker-dealers would incur \$2,000 in legal costs,⁴⁰ or \$924,000, in the aggregate, initial one-time recordkeeping burden to review and comment on the documented risk management controls.⁴¹ For purposes of this supporting statement, the one-time cost of

³⁵ This figure is based on the number of active customer accounts (91,429,407) times 0.05, since 5% of customers update their account record information each year.

³⁶ See Morgan Stanley Dean Witter comment letter submitted by J. Higgins in response to the 2001 Amendments; See Merrill Lynch comment letter to the 2001 Amendments.

³⁷ The CPI has increased by about 34% since the end of 2001. ($\$0.244 \times 1.34$) = \$0.327. In addition, postage costs have increased. Therefore, the Commission is increasing the estimate to \$0.33.

³⁸ Smaller broker-dealers are not as automated, and their processes tend to be more manual in nature. In addition, no smaller broker-dealers provided information regarding any increased equipment or systems development costs at the time of the 2001 Amendments.

³⁹ The CPI has increased by about 34% since the end of 2001. ($\$0.25 \times 1.34$) = \$0.335.

⁴⁰ The Commission staff estimates that the review of the documented controls would require 5 hours of outside counsel time at a cost of \$400 per hour.

⁴¹ $\$2,000 \times 462$ broker-dealers = \$924,000.

\$924,000 annualized over the three-year approval period is \$308,000,⁴² with an average cost per respondent of \$666,667.⁴³

The total cost burden associated with Rule 17a-3 is approximately \$44,254,361 per year.⁴⁴

14. Costs to Federal Government

There will be no additional costs to the Federal Government.

15. Changes in Burden

The annual burden declined due to a decrease in the number of respondents, despite an increase in the number of customer accounts held by broker-dealers. The annual costs increased due to inflation and increases in postage costs.

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 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.

⁴² \$924,000 / 3 years = \$308,000.

⁴³ \$308,000 / 462 firms = \$666.667.

⁴⁴ This includes annual postage costs of \$13,577,267 and ongoing equipment and systems development costs of \$30,677,094 per year.