

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for Rule 17a-11**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

In response to an operational crisis in the securities industry between 1967 and 1970, the Securities and Exchange Commission (“Commission”) adopted Exchange Act Rule 17a-11<sup>1</sup> under the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup> Rule 17a-11 requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer’s designated examining authority (“DEA”), and the Commodity Futures Trading Commission (“CFTC”) if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a-11 is an integral part of the Commission’s broker-dealer financial responsibility program, which enables the Commission, a broker-dealer’s DEA, and, if applicable, the CFTC, to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer’s financial or operational condition.

Rule 17a-11 requires a broker-dealer to give notice if its net capital declines below certain levels or of certain other occurrences related to its net capital. Rule 17a-11 also requires over-the-counter (“OTC”) derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3-1<sup>3</sup> to give notice when their tentative net capital drops below certain levels. A broker-dealer must also provide notice if it has failed to make and keep certain books and records and when it discovers or is notified by an independent public accountant of the existence of a material inadequacy. OTC derivatives dealers must also provide notice of backtesting exceptions identified pursuant to Appendix F to Rule 15c3-1.<sup>4</sup>

Additionally, paragraph (b)(1) of Rule 17a-11 requires notice when a broker-dealer experiences certain insolvency events. Paragraph (c)(5) of Rule 17a-11 requires broker-dealers engaged in securities lending or repurchase activities to either: (1) file a notice with the Commission and their DEA whenever the total money payable against all securities loaned, subject to a reverse repurchase agreement, or the contract value of all securities borrowed or subject to a repurchase agreement, exceeds 2,500% of the broker-dealer’s tentative net capital;

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<sup>1</sup> See 17 CFR 240.17a-11.

<sup>2</sup> See Exchange Act Release No. 9268 (July 30, 1971). The Office of Management and Budget (“OMB”) control number is 3235-0085.

<sup>3</sup> See 17 CFR 240.15c3-1e.

<sup>4</sup> See 17 CFR 240.15c3-1f.

or, alternatively, (2) report monthly their securities lending and repurchase activities to their DEA in a form acceptable to their DEA.

On April 17, 2014, the Commission proposed amendments to its recordkeeping and reporting rules for broker-dealers as well as new recordkeeping and reporting rules (the “SBS Recordkeeping Release”)<sup>5</sup> for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”) pursuant to its authority in sections 17(a) and 15F(f) of the Exchange Act.<sup>6</sup> More specifically, the proposed amendments to Rule 17a-11 impose collection of information requirements that result in annual time burdens for broker-dealers, SBSDs, and MSBSPs.<sup>7</sup> The Commission is proposing to amend Rule 17a-11 to require, among other things, that MSBSPs notify the Commission if their tangible net worth falls below \$20 million,<sup>8</sup> that ANC broker-dealers notify the Commission if the monthly liquidity stress test indicates that the firm’s liquidity reserve is insufficient,<sup>9</sup> that broker-dealer SBSDs notify the Commission if they fail to make a deposit required under proposed Rule 18a-4,<sup>10</sup> and that a broker dealer’s national securities exchange (“NSE”) or national securities association (“NSA”) notify the Commission if it learns that the broker-dealer failed to provide a notice required under any paragraph of Rule 17a-11 (instead of just paragraphs (b) through (e) of 17a-11).<sup>11</sup>

## 2. Purpose and Use of the Information Collection

The information obtained under Rule 17a-11 is used to monitor the financial and operational condition of a broker-dealer by the Commission staff, by the broker-dealer’s DEA, and, if applicable, by the CFTC. This information alerts the Commission, the DEA, and, if applicable, the CFTC, of the need to increase surveillance of the broker-dealer’s financial and operational condition. No similar information is already available to use or modify for purposes of complying with Rule 17a-11 because the disclosures required by the rule are unobtainable until the early warning mechanisms are triggered. Only the most up-to-date information will help the Commission, self-regulatory organizations, and the CFTC to monitor broker-dealers experiencing financial or operational difficulties.

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<sup>5</sup> *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014).

<sup>6</sup> Section 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) added section 15F to the Exchange Act. *See* Public Law 111-203, § 764; 15 U.S.C. 78o-10. Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs. *See* 15 U.S.C. 78o-10(f)(2).

<sup>7</sup> *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014).

<sup>8</sup> *See* paragraph (b)(6) of Rule 17a-11, as proposed to be amended.

<sup>9</sup> *See* paragraph (e) of Rule 17a-11, as proposed to be amended.

<sup>10</sup> *See* paragraph (f) of Rule 17a-11, as proposed to be amended.

<sup>11</sup> *See* paragraph (g) of Rule 17a-11, as proposed to be amended.

The monthly report related to the broker-dealer's securities borrowed and loan or securities repurchase and reverse repurchase activity may be filed by a broker-dealer in lieu of the filing of the required notice under paragraph (c)(5) of Rule 17a-11. The monthly report is designed to enhance the monitoring of these securities activities by securities regulators.

### **3. Consideration Given to Information Technology**

Under paragraph (g) of Rule 17a-11, as currently proposed, broker-dealers would be required to give or transmit such notice by facsimile transmission. Reports required by Rule 17a-11 may be transmitted by overnight delivery. In addition, certain self-regulatory organizations have developed systems that enable broker-dealers to transmit these notices electronically.

### **4. Duplication**

Duplication of information is not a concern because the reporting requirements are only applicable to those broker-dealers triggering the early warning mechanisms of Rule 17a-11.

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

To the extent that some broker-dealers that are required to give notice under this rule are small entities, Rule 17a-11 will impact these entities. However, the information collected under Rule 17a-11 is not expected to disproportionately affect small broker-dealers. Additionally, small broker-dealers are not expected to be affected by the SBS Recordkeeping Release's proposed amendments to Rule 17a-11.

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

In the absence of Rule 17a-11, the Commission, DEAs, and, if applicable, the CFTC, might not be promptly alerted to a broker-dealer's financial or operational problems.

### **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 has issued a release soliciting comment on the new "collection of information" requirements and associated paperwork burdens. A copy of the SBS Recordkeeping Release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff

participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission's public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

## **9. Payment or Gift**

No payment or gift is provided to respondents.

## **10. Confidentiality**

The reports required by Rule 17a-11 are available only to the staff of the Commission, the broker-dealer's DEA, and if applicable, the CFTC. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the Commission's rules thereunder (17 CFR 200.80(b)(8)), the Commission generally does not publish or make available to any person notices or reports received pursuant to Rule 17a-11. The Commission believes that information obtained under Rule 17a-11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry DEAs responsible for the regulation or supervision of broker-dealers.

## **11. Sensitive Questions**

Not applicable. The collection of information will not include Personally Identifiable Information.<sup>12</sup> No information of a sensitive nature is required.

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

The total reporting burden for the SBS Recordkeeping Release, as amended, for all respondents is approximately 880.50 hours. This burden is broken down in greater detail below.

### As Previously Adopted

**Rule 17a-11(b)–(f) – Notification Provisions for Broker and Dealers:** In 2014, the Commission received approximately 497 notices under paragraphs (b) through (f) of Rule 17a-

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<sup>12</sup> The term "Personally Identifiable Information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

11.<sup>13</sup> The Commission estimated that each broker-dealer reporting pursuant to Rule 17a-11 spends approximately one hour preparing and transmitting the notice required by Rule 17a-11, resulting in a total estimated annual reporting burden of 497 hours.<sup>14</sup>

**Rule 17a-11(c)(5) – Monthly Stock Loan/Borrow Reports:** Paragraph (c)(5) of Rule 17a-11 gives a broker-dealer the option to file monthly reports of its securities lending and borrowing and repurchase and reverse repurchase activity instead of filing notice each time its money payable against securities loaned or subject to a repurchase agreement or securities borrowed or subject to a reverse purchase agreement is more than 2500% of its tentative net capital. The Commission estimates that six broker-dealers will elect to submit the monthly stock loan/borrow report under paragraph (c)(5) of Rule 17a-11. Each firm will spend, on average, approximately 100 hours of employee resources updating its systems to generate the information required in the monthly report. Therefore, the Commission estimates that the total one-time reporting burden to broker-dealers arising from this requirement will be approximately 600 hours.<sup>15</sup> The Commission estimates each firm will spend, on average, approximately one hour per month (or twelve hours per year) of employee resources to prepare and send the report or to prepare the information for the FOCUS Report (as required by the firm’s DEA, if applicable). This imposes an ongoing burden of 12 hours per year. Therefore, the Commission estimates that this requirement adds to the industry an ongoing burden of 72 hours per year.<sup>16</sup>

Therefore, the total estimated burden for broker-dealers to comply with Rule 17a-11 before the SBS Recordkeeping Release is 769 hours<sup>17</sup> increasing the hourly burden by 32 hours.<sup>18</sup>

### Proposed Amendments

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<sup>13</sup> See paragraph (b)(1) of Rule 17a-11 (notice required if broker-dealer’s net capital declines below minimum or broker-dealer is notified that it failed to provide requisite notice of net capital deficiency); paragraph (b)(2) of Rule 17a-11 (notice required if broker-dealer’s tentative net capital declines below minimum); paragraph (c)(1) of Rule 17a-11 (notice required if broker-dealer’s aggregate indebtedness is more than 1200% of its net capital); paragraph (c)(2) of Rule 17a-11 (notice required if broker-dealer’s net capital is less than 5% of its aggregate debit items); paragraph (c)(3) of Rule 17a-11 (notice required if broker-dealer’s net capital is less than 120% of net capital minimum); paragraph (c)(4) (notice required for broker-dealer’s fourth and subsequent backtesting exceptions); paragraph (c)(5) of Rule 17a-11 (notice required if broker-dealer’s money payable against securities loaned or subject to a repurchase agreement or securities borrowed or subject to a reverse repurchase agreement is more than 2500% of its tentative net capital); paragraph (d) of Rule 17a-11 (notice required if broker-dealer fails to keep its books and records current); paragraph (e) of Rule 17a-11 (notice required if broker-dealer discovers or is notified of material inadequacy or material weakness); paragraph (f) of Rule 17a-11 (national securities exchange or national securities association must provide notice if it learns broker-dealer failed to provide notice required by paragraphs (b) through (e) of Rule 17a-11).

<sup>14</sup> 497 notices x 1 hour per notice = 497 hours.

<sup>15</sup> 6 broker-dealers x 100 hours per firm = 600 hours. The three-year annualized number for this one-time burden is 200 hours (600 hours/3 years).

<sup>16</sup> 6 broker-dealers x 12 hours per year = 72 hours.

<sup>17</sup> 497 hours + 200 hours + 72 hours = 769 hours.

<sup>18</sup> 769 hours – 737 hours = 32 hours.

**Rule 17a-11(b)(6) – Notice of Tangible Net Worth:** The proposed amendments to Rule 17a-11 described in the SBS Recordkeeping Release would impose collection of information requirements that result in annual time burdens for certain broker-dealers.<sup>19</sup> The Commission is proposing to add paragraph (b)(6) to Rule 17a-11, which would require broker-dealer MSBSPs to notify the Commission if their tangible net worth falls below \$20 million.<sup>20</sup> Because the burden of actually calculating the firm’s tangible net worth is already accounted for in the PRA estimate for proposed Rule 18a-2,<sup>21</sup> the burden imposed by paragraph (b)(6) of Rule 17a-11, as proposed to be amended, is the requirement to notify the Commission when the firm’s tangible net worth falls to a certain level. However, the Commission does not expect to receive any notices under this provision, since the Commission expects only one broker-dealer MSBSP to register with the Commission, and the broker-dealer MSBSP would already be subject to the more stringent net capital requirements applicable to broker-dealers. Thus, the Commission does not expect paragraph (b)(6) of Rule 17a-11, as proposed to be amended, to impose an additional burden. Those proposed amendments that are expected to impose a one-time initial burden or an ongoing burden are discussed below.

**Rule 17a-11(e) – Notice of Insufficient Liquidity Reserve:** The Commission is proposing to add paragraph (e) to Rule 17a-11, which would require ANC broker-dealers to notify the Commission if the monthly liquidity stress test indicates that the amount of the firm’s liquidity reserve is insufficient.<sup>22</sup> Because the burden of actually performing the liquidity stress test is already accounted for in the PRA estimate for Rule 15c3-1,<sup>23</sup> the burden imposed by paragraph (e) of Rule 17a-11, as proposed to be amended, is the requirement to notify the Commission if the amount of the firm’s liquidity reserve is insufficient. Given the similarity in the rules, the Commission estimates that each required notice would take one hour to prepare and file. The Commission does not expect to receive many notices under paragraph (e) of Rule 17a-11, given that it did not receive any Rule 17a-11 notices from ANC broker-dealers in 2012. However, since the Commission estimates that 4 additional firms will register as ANC broker-dealers, the Commission estimates that 1 notice per year would be filed under paragraph (e) of Rule 17a-11, resulting in an industry-wide ongoing annual burden of 1 hour per year.<sup>24</sup>

**Rule 17a-11(f) – Notice of Failure to Deposit in Rule 18a-4 Account:** The Commission is proposing to add paragraph (f) to Rule 17a-11, which requires broker-dealer SBSBs to notify

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<sup>19</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014).

<sup>20</sup> See paragraph (b)(6) of Rule 17a-11, as proposed to be amended.

<sup>21</sup> See *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 No. 68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012).

<sup>22</sup> See paragraph (e) of Rule 17a-11, as proposed to be amended.

<sup>23</sup> See *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 No. 68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012).

<sup>24</sup> 1 notice x 1 hour per notice = 1 hour.

the Commission if they fail to make a deposit required under proposed Rule 18a-4.<sup>25</sup> Because the burden to calculate the reserve amount is already accounted for in the PRA estimate for proposed Rule 18a-4,<sup>26</sup> the burden imposed by paragraph (f) of Rule 17a-11, as proposed to be amended, is the requirement to notify the Commission when the firm fails to act in accordance with proposed Rule 18a-4. Given the similarity in the rules, the Commission estimates that each required notice would take one hour to prepare and file. Based on Commission experience with the number of notices filed under current Rule 17a-11,<sup>27</sup> the Commission estimates that 100 notices would be filed each year under paragraph (f) of Rule 17a-11, as proposed to be amended, resulting in an estimated industry-wide ongoing annual burden of 100 hours per year.<sup>28</sup>

**Rule 17a-11(g) – Notices Filed by Exchanges and National Securities Associations:**

The Commission proposes to redesignate paragraph (f) of Rule 17a-11 as paragraph (g) and to require a broker-dealer’s national securities exchange (“NSE”) or national securities association (“NSA”) to notify the Commission if it learns that the broker-dealer failed to provide a notice required under any paragraph of Rule 17a-11 (instead of just paragraphs (b) through (e) of Rule 17a-11).<sup>29</sup> Thus, NSEs and NSAs would be subject to new burdens to file a delinquent broker-dealer’s notices under new paragraphs (e) (liquidity stress test) and (f) (failure to deposit in Rule 18a-4 account). After considering the similar Rule 17a-11 requirement, the Commission estimates that each required notice would take one hour to prepare and file. Based on Commission experience with the number of notices currently filed by NSEs and NSAs, the Commission estimates that ten notices would be filed pursuant to the amendment to paragraph (g) of Rule 17a-11, as proposed to be amended, resulting in an estimated industry-wide ongoing annual burden of 10 hours per year.<sup>30</sup>

Therefore, the proposed amendments for broker-dealers to comply with Rule 17a-11 increases the hourly burden by 111 hours.<sup>31</sup>

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<sup>25</sup> See paragraph (f) of Rule 17a-11, as proposed to be amended.

<sup>26</sup> See *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 No. 68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012).

<sup>27</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193, 25274 (May 2, 2014) (noting that in 2012, the Commission received approximately 443 notices under Rule 17a-11).

<sup>28</sup> 100 notices x 1 hour per notice = 100 hours.

<sup>29</sup> See paragraph (g) of Rule 17a-11, as proposed to be amended.

<sup>30</sup> 10 notices x 1 hour per notice = 10 hours.

<sup>31</sup> 1 hour + 100 hours + 10 hours = 111 hours.

Therefore, the resulting estimated total burden to comply with Rule 17a-11, as amended, is approximately 880 hours.<sup>32</sup> These burdens are reporting burdens.

Summary of Hourly Burdens										
		A.	B.	C.		E.	F.	G.		
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden	Small Business Entities Affected
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * % 0%]
Rule 17a-11(b)-(f) – Notification Provisions for Broker and Dealers	Reporting	497	1	0.00	0.00	1.00	1.00	1.00	497.00	0.00
Rule 17a-11(c)(5) – Monthly Stock Loan/Borrow Reports	Reporting	6	12	8.33	2.78	1	3.78	45.33	272.00	0.00
Rule 17a-11(e) – Notice of Insufficient Liquidity Reserve	Reporting	1	1	0.00	0.00	1.00	1.00	1.00	1.00	0.00
Rule 17a-11(f) – Notice of Failure to Deposit in Rule 18a-4 Account	Reporting	100	1	0.00	0.00	1.00	1.00	1.00	100.00	0.00
Rule 17a-11(g) – Notices Filed by Exchanges and National Securities Associations	Reporting	10	1	0.00	0.00	1.00	1.00	1.00	10.00	0.00
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>880.00</b>	

### 13. Costs to Respondents

Rule 17a-11 is not anticipated to impose additional costs to respondents in connection with the burden described in Item 12 above. The Commission does not anticipate that the proposed amendments to Rule 17a-11 described in the SBS Recordkeeping Release will impose additional costs.

### 14. Cost to Federal Government

Rule 17a-5 is not expected to result in costs to the federal government due to contracting, information technology, development, hiring one or more new employees, or reallocating existing employees.

<sup>32</sup> 497 hours + 200 hours + 72 hours + 1 hour + 100 hours + 10 hours = 880 hours.



**15. Changes in Burden**

The annual ongoing hour burden of 880 hours reflects a 143 hour increase from the current OMB inventory of 737 hours. This change reflects an additional 111 hours due to the proposed amendments to Rule 17a-11 described in the SBS Recordkeeping Release and an increase of 32 hours in the number of notices received by the Commission under the currently existing rule (from 465 notices to 497 notices).

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

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

**17. OMB Expiration Date Display Approval**

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