

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Rule 17a-3

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

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 This collection of information requirement was most recently approved without change by OMB on March 9, 2017, and expires on March 31, 2019.

As part of proposed new Rule 17a-14 and Form CRS, and proposed Regulation Best Interest, the Commission is proposing to amend Rule 17a-3 by adding new paragraphs (a)(24)

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).

and (a)(25).⁶ To aggregate the entire burden of Rule 17a-3 into one information collection (and existing OMB control number), the Commission is adding the annual burden hours for new paragraphs (a)(24) and (a)(25) of Rule 17a-3 into this information collection. The Rule 17a-3 information collection OMB control number is 3235-0033.

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. In addition, records made and retained in accordance with proposed Rule 17a-3(a)(25) and the proposed amendment to Rule 17a-4(e)(5)⁷ would assist a broker-dealer in supervising and assessing internal compliance with proposed Regulation Best Interest.

Proposed rule 17a-3(a)(24) would require SEC-registered broker-dealers to make a record indicating the date that a relationship summary was provided to each customer and to each

⁶ See *Regulation Best Interest*, Release No. 34-83062; File No. S7-07-18 (Apr. 18, 2018) ("Regulation Best Interest Proposing Release"). The Commission proposed a new rule under the Exchange Act establishing a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer ("Regulation Best Interest"). Because Regulation Best Interest has its own OMB Control Number, a separate supporting statement is being submitted.

In addition, the Commission proposed new Rule 17a-14 and Form CRS under the Exchange Act that would require registered broker-dealers that offer services to retail investors to prepare, file with the Commission, and deliver to retail investors a brief relationship summary. See *Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles*, Release No. 34-83063; File No. S7-08-18 (Apr. 18, 2018) ("Relationship Summary Release"). As with Regulation Best Interest, Rule 17a-14 and Form CRS would have its own OMB Control Number [•], for which a separate supporting statement is being submitted.

⁷ As part of proposing Regulation Best Interest, the Commission is also proposing to amend Exchange Act Rule 17a-4(e)(5) to require broker-dealers to retain any information that the retail customer provides to the broker-dealer or the broker-dealer provides to the retail customer pursuant Rule 17a-3(a)(25), in addition to the existing requirement to retain information obtained pursuant to Rule 17a-3(a)(17). Because the recordkeeping obligations are being adopted under Rule 17a-4, which has its own OMB Control Number, a separate supporting statement is being submitted to address these amendments.

prospective customer who subsequently becomes a customer.⁸ The Commission staff would use this collection of information in its examination and oversight program.

Proposed rule 17a-3(a)(25) would require broker-dealers to make a record of “all information collected from and provided to the retail customer” pursuant to Regulation Best Interest where a securities-related transaction or investment strategy involving securities is or will be recommended to a retail customer. The broker-dealer must also make a record of the identity of the associated person, if any, responsible for the account.

3. Consideration Given to Information Technology

The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens that result from the proposed addition of paragraphs (a)(24) and (a)(25) to Rule 17a-3. The proposed rules do not prescribe particular forms or methods of compliance for broker-dealers or their associated person, to allow maximum flexibility with respect to new technologies as they develop.

4. Duplication

Rule 17a-3 was drafted and amended to codify SRO record-keeping requirements and the record-keeping practices of prudent broker-dealers. Although most broker-dealers already create many of the records required by the proposed additions of paragraphs (a)(24) and (a)(25) to Rule 17a-3 either voluntarily or pursuant to SRO requirements, no duplication of such information is apparent because no other Commission rule establishes an explicit requirement to create such records.

As noted above, proposed Rule 17a-3(a)(24) would require broker-dealers to make a record indicating the date that a relationship summary was provided to each customer and to each prospective customer who subsequently becomes a customer. No other rule requires broker-dealers to provide the same information that would be required by Rule 17a-3(a)(24).

As noted above, proposed Rule 17a-3(a)(25) would require a broker-dealer to make a record of all information collected from and provided to the retail customer pursuant to Proposed Regulation Best Interest. We understand that broker-dealers currently make records of relevant customer investment profile information, and we therefore assume that no additional record-making obligations would arise as a result of broker-dealers’ or their registered representatives’ collection of information from retail customers.⁹

⁸ Although the disclosures in Form CRS are discussed in this supporting statement, the burden and cost estimates associated with preparing, filing, posting and delivery of Form CRS will have its own OMB Control Number, for which a separate supporting statement is being submitted.

⁹ The PRA burdens and costs arising from the requirement that a record be made of all information provided to the retail customer are accounted for in proposed Regulation Best Interest and *Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles*, Release No. 34-83063,

In addition, the proposed amendment to Rule 17a-3(a)(25) would require a broker-dealer, “for each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided,” to make a record of the “identity of each natural person who is an associated person, if any, responsible for the account.” We understand that broker-dealers likely make such records in the ordinary course of their business pursuant to Exchange Act Rules 17a-3(a)(6) and (7). However, we are assuming based on our understand of current broker-dealer practices, for purposes of compliance with proposed Rule 17a-3(a)(25), that broker-dealers would need to create a record, or modify an existing record, to identify the associated person, if any, responsible for the account in the context of proposed Regulation Best Interest.

5. Effect on Small Entities

The Regulatory Flexibility Act (“RFA”)¹⁰ requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)¹¹ of the Administrative Procedure Act,¹² as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on “small entities.”¹³ For purposes of a Commission rulemaking in connection with the RFA, a broker-dealer will be deemed a small entity if it: (1) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,¹⁴ or, if not required to file such statements, had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁵

IA-4888, File No. S7-08-18 (“Relationship Summary Proposal”). With respect to the requirement that a record be made of all information from the retail customer, we believe that proposed Rule 17a-3(a)(25) would not impose any new substantive burdens on broker-dealers. As discussed in the Regulation Best Interest Proposing Release, we believe that the obligation to exercise reasonable diligence, care, skill and prudence would not require a broker-dealer to collect additional information from the retail customer beyond that currently collected in the ordinary course of business even though a broker-dealer’s analysis of that information and any resulting recommendation would need to adhere to the enhanced best interest standard of Regulation Best Interest.

¹⁰ 5 U.S.C. 601 *et seq.*

¹¹ 5 U.S.C. 603(a).

¹² 5 U.S.C. 551 *et seq.*

¹³ Although Section 601(b) of the RFA defines the term “small entity,” the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10 under the Exchange Act, 17 CFR 240.0-10.

¹⁴ See 17 CFR 240.17a-5(d).

¹⁵ See 17 CFR 240.0-10(c).

Based on 2017 FOCUS Report data about the broker-dealer retail market, we believe that approximately 802 broker-dealers – with an estimated 7,845 retail customer accounts – would qualify as small entities subject to Regulation Best Interest and the proposed new record-making and recordkeeping requirements. However, proposed Regulation Best Interest does not distinguish between small entities and other broker-dealers. We recognize that different broker-dealers may require different amounts of time or external assistance in preparing for proposed Relationship Best Interest. The Commission believes, however, that imposing different requirements on smaller firms would not be consistent with investor protection and the purposes of proposed Regulation Best Interest. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

The number and complexity of records required to be made under Rule 17a-3 vary proportionately with the volume and complexity of the broker-dealer’s business.

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 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. Although many broker-dealers would likely make these records as a matter of best practice, they are not explicitly required to do so under current Commission rules. If a broker-dealer does not make these records, or it makes these records less frequently, the level of investor protection will be reduced because the existence of the records would assist a broker-dealer in supervising and assessing internal compliance with Regulation Best Interest and assist the Commission and SRO staff in connection with examinations and investigations. 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 Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens under the Relationship Summary Release, which includes Rule 17a-3(a)(24), and proposed Regulation Best Interest, which includes Rule 17a-3(a)(25). Copies of the releases are 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 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

Proposed Regulation Best Interest would impose a best interest obligation on a broker-dealer when making recommendations of any securities transaction or investment strategy involving securities to “retail customers.” Form CRS and Rule 17a-14 would require broker-dealers that offer services to retail investors to prepare, file with EDGAR, post to the broker-dealer’s website (if available), and deliver to retail investors a brief relationship summary. As of December 31, 2017, 3,841 broker-dealers were registered with the Commission – either as standalone broker-dealers or as dually-registered entities. Based on data obtained from Form BR, the Commission preliminarily believes that approximately 74.4% of this population, or 2,857 broker-dealers have retail customers and therefore would likely be subject to Regulation Best Interest and Rules 17a-14 and Form CRS, as well as the proposed amendments to Rules 17a-3(a)(24), 17a-3(a)(25) 17a-4(e)(5), and 17a-4(e)(10).¹⁶

As with broker-dealers, proposed Regulation Best Interest would impose a best interest obligation on natural persons who are associated persons of broker-dealers, when making recommendations of any securities transaction or investment strategy involving securities to “retail customers.” The Commission preliminarily believes that approximately 435,071 natural persons would qualify as retail-facing, licensed representatives at standalone broker-dealers or

¹⁶ As of December 31, 2017, 3,841 broker-dealers filed Form BD. Retail sales by broker-dealers were obtained from Form BR.

dually-registered firms,¹⁷ and would therefore likely be subject to proposed Regulation Best Interest, and the proposed amendments to Rules 17a-3(a)(25) and 17a-4(e)(5).¹⁸

To aggregate the entire burden of Rule 17a-3 into one information collection (and OMB control number), the Commission is adding the annual burden hours for proposed paragraph (a)(25) of Rule 17a-3 into the Rule 17a-3 information collection. Proposed Rule 17a-3(a)(24) would require SEC-registered broker-dealers to make a record indicating the date that a relationship summary was provided to each customer and to each prospective customer who subsequently becomes a customer. Proposed Rule 17a-3(a)(25) would require a broker-dealer to make a record of all information collected from and provided to the retail customer pursuant to Proposed Regulation Best Interest. We understand that broker-dealers currently make records of relevant customer investment profile information, and we therefore assume that no additional record-making obligations would arise as a result of broker-dealers' or their registered representatives' collection of information from retail customers.¹⁹

In addition, the proposed amendment to Rule 17a-3(a)(25) would require a broker-dealer, "for each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided," to make a record of the "identity of each natural person who is an associated person, if any, responsible for the account." We understand that broker-dealers likely make such records in the ordinary course of their business pursuant to Exchange Act Rules 17a-3(a)(6) and (7). However, we are assuming, for purposes of compliance with proposed Rule 17a-3(a)(25), that broker-dealers would need to create a record, or modify an existing record, to identify the associated person, if any, responsible for the account in the context of proposed Regulation Best Interest.

¹⁷ This estimate is based on the following calculation: (494,399 total licensed representatives (including representatives of investment advisers)) x (12% (the percentage of total licensed representatives who are standalone investment adviser representatives)) = 59,328 representatives at standalone investment advisers. To isolate the number of representatives at standalone broker-dealers and dually-registered firms, we have subtracted 59,328 from 494,399, for a total of 435,071 retail-facing, licensed representatives at standalone broker-dealers or dually-registered firms.

¹⁸ Unless otherwise noted, for purposes of this supporting statement, we use the term "registered representatives" to refer to associated persons of broker-dealers who are registered, have series 6 or 7 licenses, and are retail-facing, and we use the term "dually-registered representatives of broker-dealers" to refer to registered representatives who are dually-registered and are associated persons of a standalone broker-dealer (who may be associated with an unaffiliated investment adviser) or a dually-registered broker-dealer.

¹⁹ The PRA burdens and costs arising from the requirement that a record be made of all information provided to the retail customer are accounted for in proposed Regulation Best Interest and the Relationship Summary Proposal. With respect to the requirement that a record be made of all information from the retail customer, we believe that proposed Rule 17a-3(a)(25) would not impose any new substantive burdens on broker-dealers. As discussed in the Regulation Best Interest Proposing Release, we believe that the obligation to exercise reasonable diligence, care, skill and prudence would not require a broker-dealer to collect additional information from the retail customer beyond that currently collected in the ordinary course of business even though a broker-dealer's analysis of that information and any resulting recommendation would need to adhere to the enhanced best interest standard of Regulation Best Interest.

Based on our understanding of current broker-dealer practices, we assume that broker-dealers would satisfy the record-making requirement of the proposed amendment to Rule 17a-3(a)(25) by amending an existing account disclosure document to include this information. We believe that the inclusion of this information in an account disclosure document would require, on average, approximately 1 hour per year for outside counsel at small broker-dealers, at an average rate of \$472/hour, for an annual cost of \$472 for each small broker-dealer to update an account disclosure document. The projected initial, aggregate cost for small broker-dealers would be \$378,544.²⁰ For broker-dealers that are not small entities, we estimate that the initial burden would be 2 hours for each broker-dealer: 1 hour for internal compliance personnel and 1 hour for internal legal personnel. We therefore believe the initial one-time internal aggregate burden for broker-dealers that are not small entities would be approximately 4,110 burden hours or 1,370 annualized burden hours.²¹ Finally, we estimate it would require an additional 0.04 hours for the registered representative responsible for the information (or other clerical personnel) to fill out that information in the account disclosure document, for an approximate total aggregate initial burden of 3,808,000 hours, or approximately 1,333 hours per broker-dealer for the first year after the rule is in effect.²²

We do not believe that the identity of the registered representative responsible for the retail customer's account would change. Accordingly, we believe that there are no ongoing costs and burdens associated with this record-making requirement of the proposed amendment to Rule 17a-3(a)(25).

In connection with Rule 17a-3(a)(24), Commission staff has estimated that the proposed new rule would result in an incremental burden increase of 0.1 hours annually, for each of the broker-dealers required to prepare and deliver the relationship summary, to record the date that a relationship summary was provided to each existing and new customer. The incremental hour burden for broker-dealers to record this information would be approximately 286 hours in aggregate.²³

In total, we estimate the aggregate burden attributed to Rules 17a-3(a)(24) and 17a-3(a)(25) to be 286 burden hours and 3,812,110 burden hours, respectively, which would be in

²⁰ This estimate is based on the following calculation: (1 hour per small broker-dealer) x (802 small broker-dealers) x (\$472/hour) = \$378,544 in aggregate costs, or \$157.33 per year per small broker-dealer when annualized over three years.

²¹ This estimate is based on the following calculation: (2 burden hours per broker-dealer) x (2,055 large broker-dealers) = 4,110 aggregate burden hours/3=1,370 aggregate burden hours annualized.

²² These estimates are based on the following calculations: (0.04 hours per customer account) x (95.2 million retail customer accounts) = 3,808,000 aggregate burden hours. Conversely, (3,808,000 burden hours) / (2,857 broker-dealers) = 1,333 hours per broker-dealer. The costs and burdens associated with the delivery of the amended account disclosure document are addressed elsewhere in the supporting statement for Regulation Best Interest, thus, they were not included in this section of the analysis. The Regulation Best Interest collection OMB control number is [•].

²³ 2,857 broker-dealers x 0.1 hours = approximately 286 hours.

addition to the burden hours previously summarized in the most recent Rule 17a-3 PRA Supporting Statement (as listed below):

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
Rule 17a-3(a)(24)	Recordkeeping	2,857	1	0.1	286
Rule 17a-3(a)(25)	Recordkeeping	2,055	1	2	4,110
Rule 17a-3(a)(25)	Recordkeeping	2,857	33,322	0.04	3,808,000

13. Costs to Respondents

We do not expect respondents to incur external costs in connection with Rule 17a-3(a)(24). The total cost associated with Rule 17a-3(a)(25) is approximately \$378,544 per year.²⁴

²⁴ This estimate is based on the following calculation: (1 hour per small broker-dealer) x (802 small broker-dealers) x (\$472/hour) = \$378,544 in aggregate costs.

14. Costs to Federal Government

There will be no additional costs to the Federal Government.

15. Changes in Burden

The annual burden increased by 3,812,396 burden hours for all respondents or approximately 1,334 burden hours per respondent due to an increase in the obligations imposed on respondents, despite a decrease in the number of customer accounts held by broker-dealers. The annual costs increased by \$378,544 per year for small broker-dealers due to inflation and increases in compliance costs related to ongoing systems and development costs. We do not believe that the annual costs for large broker-dealers would increase.

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.