

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Rule 17a-4

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”). 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 1940, adopted Rules 17a-3 and 17a-4 (one of the “Books and Records Rules”),³ which codified and specified minimum standards with respect to business records that broker-dealers must create and maintain. Rule 17a-3 requires exchange members, brokers and dealers to make and keep current certain records relating to a broker’s or dealer’s financial condition and operations. Rule 17a-4 requires broker-dealers to preserve, for prescribed periods of time, certain records required to be created under Rule 17a-3 and certain other Commission rules. In addition, Rule 17a-4 requires broker-dealers to preserve other records that may be created or received by the broker-dealer in the ordinary course of its business for prescribed periods of time. This collection of information requirement was most recently approved without change by OMB on October 28, 2016, and expires on October 31, 2019.

¹ 15 U.S.C. 78q(a).

² 15 U.S.C. 78w(a).

³ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

As part of proposed Regulation Best Interest, the Commission is proposing to amend Rule 17a-4 by revising paragraph (e)(5).⁴ In addition, as part of the separate Commission proposal, of new Rule 17a-14 and Form CRS, the Commission is proposing to add paragraph (e)(10) to Rule 17a-4.⁵ To aggregate the entire burden of Rule 17a-4 into one information collection (and OMB control number), the Commission is amending the annual burden hours for paragraph (e)(5) of Rule 17a-4 into this information collection. The Rule 17a-4 information collection OMB control number is 3235-0279.

2. Information Collection Purpose and Use

The purpose of requiring that broker-dealers maintain the records specified in Rule 17a-4 is to help ensure that examiners and other representatives of the Commission, state securities regulatory authorities, and the self-regulatory organizations (“SROs”) have access to the information and documents necessary 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. Without Rule 17a-4, it would be impossible for the Commission to determine whether a broker-dealer that chose not to preserve records was in compliance with these rules. Such a situation would not be in the public interest and would be detrimental to investors and the financial community as a whole. In addition, records made and retained in accordance with proposed Rule 17a-3(a)(25)⁶ and the proposed amendment to Rule 17a-4(e)(5) would assist a broker-dealer in supervising and assessing internal compliance with proposed Regulation Best Interest.⁷ Records made and

⁴ 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 relating to its collection of information.

⁵ On April 18, 2018, the Commission issued a release proposing new Form CRS and Rule 17a-14 under the Exchange Act. 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, IA-4888 (Apr. 18, 2018) (“Relationship Summary Release”) (proposing 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). The OMB control number for the supporting statement for the Relationship Summary Release is [•].

⁶ The Rule 17a-3 information collection OMB control number is 3235-0033.

⁷ As part of proposing Regulation Best Interest, 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. Because the record-making obligations are being adopted under Rule 17a-3, which has its own

retained in accordance with proposed Rule 17a-3(a)(24) and the proposed addition of paragraph (e)(1) to Rule 17a-4 would assist a broker-dealer in supervising and assessing internal compliance with proposed Rule 17a-14 and Form CRS.⁸

The proposed amendment of paragraph (e)(5) to Rule 17a-4 would require that all records made pursuant to the proposed amendment to Rule 17a-3(a)(25) must be retained “in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated.”

The proposed addition of paragraph (e)(10) to Rule 17a-4 would require that all records made pursuant to the proposed amendment to Rule 17a-3(a)(24), as well as a record of each relationship summary, must be retained until at least six years after such record or Form CRS is created.

3. Consideration Given to Information Technology

Rule 17a-4 specifically allows brokers and dealers to use electronic storage media to comply with the record-keeping requirements under the Securities and Exchange Act of 1934. 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

The Commission evaluates reporting, recordkeeping and third-party disclosure obligation requirements for duplication, and reevaluates them whenever it proposes a rule or a change in a rule. No other rule explicitly requires broker-dealers and their financial professionals to provide the same information that is required by the amendments to rule 17a-4. Therefore, we believe there is no duplication.

5. Effects on Small Entities

The Regulatory Flexibility Act (“RFA”)⁹ requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)¹⁰ of

OMB Control Number, a separate supporting statement is being submitted to address that amendment.

⁸ As part of proposing Rule 17a-14 and Form CRS, 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. Because the record-making obligations are being adopted under Rule 17a-3, which has its own OMB Control Number, a separate supporting statement is being submitted to address that amendment.

⁹ 5 U.S.C. 601 *et seq.*

¹⁰ 5 U.S.C. 603(a).

the Administrative Procedure Act,¹¹ 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.”¹² 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,¹³ 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.¹⁴

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 preserved by Rule 17a-4 vary proportionately with the volume and complexity of the broker-dealer's business.

6. Consequences of Not Conducting Collection

Rule 17a-4 is a record preservation rule. Without Rule 17a-4, the proposed amendment to Rule 17a-4(e)(5), and the addition of Rule 17a-4(e)(10), it would be impossible for the Commission to determine whether a broker-dealer that chose not to preserve records was in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, proposed Regulation Best Interest, proposed Rule 17a-14 and Form CRS, and other Commission, SRO, and State laws, rules, and regulations. Such a situation would not be in the public interest and would be detrimental to investors and the financial community as a whole.

¹¹ 5 U.S.C. 551 *et seq.*

¹² 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.

¹³ See 17 CFR 240.17a-5(d).

¹⁴ See 17 CFR 240.0-10(c).

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

Certain provisions of Rule 17a-4 require respondents to retain records for more than three years. In addition, Rule 17a-4(d) requires that a broker-dealer maintain specified organizational documents for the life of the enterprise and any successor enterprise.

Under Rule 17a-4(e)(5), broker-dealers are required to maintain and preserve in an easily accessible place all account information required pursuant to Rule 17a-3(a)(17) for six years.¹⁵ The proposed amendment to Rule 17a-4(e)(5) would require a broker-dealer to maintain all account record information required pursuant to Rule 17a-3(a)(17) and all records required pursuant to proposed Rule 17a-3(a)(25), in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated. Finally, the proposed addition of Rule 17a-4(e)(10) would require a broker-dealer to maintain all records required pursuant to Rule 17a-3(a)(24) and a record of each Form CRS, until at least six years after such record or Form CRS is created.

These extended retention periods are necessary with respect to the records itemized above in order to provide regulators with sufficient time to conduct comprehensive inspections and investigations. Due to budget constraints, regulators only examine broker-dealers and office locations periodically. Further, certain of these documents do not become obsolete (*e.g.*, organizational documents).

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 proposed Regulation Best Interest, which includes Rule 17a-4(e)(5). A copy of the 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

The Commission did not provide any payment or gift to respondents.

10. Confidentiality

The records required by Rule 17a-4 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

¹⁵ See 17 CFR 240.17a-4.

(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

To aggregate the entire burden of Rule 17a-4 into one information collection (and OMB control number), the Commission is adding the estimated one-time initial burden, as well as the estimated annual ongoing burden of the proposed amendment to Rule 17a-4(e)(5) and proposed new Rule 17a-4(e)(10), into this information collection. As explained in greater detail below, the Commission estimates that each broker-dealer subject to Regulation Best Interest will incur a one-time initial burden of 5,554 hours¹⁶, as well as an ongoing annual burden of 1,111 hours¹⁷ as a result of the proposed amendment to Rule 17a-4(e)(5).

For each record made pursuant to proposed Rule 17a-3(a)(25), the proposed amendment to Rule 17a-4(e)(5) would require broker-dealers to retain “all account record information required pursuant to [proposed Regulation Best Interest] and all records required pursuant to [proposed Regulation Best Interest], in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated.” The Commission believes the following records would likely need to be retained pursuant to proposed Rule 17a-3(a)(25): (1) a standardized Relationship Summary document, developed in accordance with the rules and guidance contained in the Relationship Summary Proposal;¹⁸ (2) existing account disclosure documents; (3) a comprehensive fee

¹⁶ This estimate is based on the following calculation: (5 documents per customer account) x (95.2 million retail customer accounts) x (2 minutes per document) / 60 minutes = 15,866,667 aggregate burden hours, or 5,288,889 annualized over three years. 15,866,667 aggregate burden hours / 2,857 broker-dealers with retail customers=5,554 burden hours per broker-dealer, or 1851.33 annualized over three years.

¹⁷ This estimate is based on the following calculation: (40% update for fee schedule x 2 minutes per document) + (40% update for conflicts disclosure x 2 minutes)=3,173,334 ongoing burden hours. 3,173,334/2,857 broker-dealers with retail customers=1,111 annual burden hours per broker-dealer.

¹⁸ 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, IA-4888, File No. S7-08-18 (“Relationship Summary Proposal”).

schedule; (4) disclosures identifying material conflicts; and (5) a separate disclosure regarding capacity, scope and type of services.¹⁹

Based on the assumption that broker-dealers will rely on existing infrastructures to satisfy the recordkeeping obligations of Regulation Best Interest and the proposed amendment to Rule 17a-4(e)(5), we believe the burden for broker-dealers to add new documents or modify existing documents to the broker-dealer's existing retention system would be approximately 15.9 million burden hours for all broker-dealers, assuming a broker-dealer would need to upload or file each of the five account documents discussed above for each retail customer account.²⁰

We estimate that the approximate ongoing burden associated with the recordkeeping requirement of proposed amendment to Rule 17a-4(e)(5) is 3.17 million burden hours per year.²¹

Rule 17a-4(e)(10) would require broker-dealers subject to Rule 17a-14 and Form CRS to maintain each record made pursuant to Rule 17a-3(a)(24) for at least six years. We estimate that this will increase the burden for each such broker-dealer by 0.10 hours, or an estimated aggregate burden of 285.7 hours on an annual basis.²²

13. Costs to Respondents

The Commission does not believe there would be additional one-time internal or external costs relating to the uploading or filing of the documents required by the proposed amendment to Rules 17a-4(e)(5) or 17a-4(e)(10), nor does the Commission believe that the ongoing costs associated with ensuring compliance with the retention schedule would change materially from the current costs of ensuring compliance with existing Rule 17a-4.²³

¹⁹ While we estimate broker-dealers will likely need to retain these five documents, there may be a different number of disclosure documents related to Regulation Best Interest based on different facts and circumstances relating to the broker-dealer.

²⁰ This estimate is based on the following calculation: (5 documents per customer account) x (95.2 million retail customer accounts) x (2 minutes per document) / 60 minutes = 15,866,667 aggregate burden hours.

²¹ This estimate is based on the percentage of account records we expect would be updated each year as described in Section V.B.2, of the Regulation Best Interest Proposing Release, and the following calculation: (40% of fee schedules x 95.2 million retail customer accounts) x (2 minutes per document) + (40% of conflict disclosure forms x 95.2 million retail customer accounts) x (2 minutes per document) + (20% of account opening documents x 95.2 million retail customer accounts) x (2 minutes per document) = 3,173,334 aggregate ongoing burden hours. 2,857 broker-dealers x 0.1 hours = 285.7 hours in aggregate.

²² ²³ However, the Commission requested comment on this assumption regarding both the frequency with which a broker-dealer would need to collect, provide, replace, or update the records made pursuant to the proposed amendment to Rule 17a-3(a)(25), and also on whether there would be additional costs relating to ensuring compliance with record retention and retention schedules pursuant to Rule 17a-4 in the Regulation Best Interest Proposing Release.

14. Costs to the Federal Government

The federal government does not incur a cost for this collection of information since it relates to a recordkeeping burden for the respondents.

15. Changes in Burden

The annual recordkeeping burden would increase by 8,462,498 burden hours for all respondents or 2,962.02 burden hours per respondent as a result of the amendment to Rule 17a-4(e)(5) and addition of Rule 17a-4(e)(10). As stated above, the Commission does not believe broker-dealers would incur any initial one-time or ongoing costs related to the amendments to Rule 17a-4.

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.