SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Rule 17a-3
OMB No. 3235-0033

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq. **This Supporting Statement discusses the collections of information that were part of the recent rulemaking for Regulation Best Interest and Form CRS. The collections of information in 3235-0033 that were not affected by that rulemaking are not being revised.**

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.

2019 Rulemaking

On June 5, 2019, the Commission adopted Rule 15*l*-1 under the Securities Exchange Act of 1934 ("Exchange Act") establishing a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer (unless otherwise indicated, together referred to as "broker-dealer" or "BD") when making a recommendation of any securities

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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).

transaction or investment strategy involving securities to a retail customer ("Regulation Best Interest").[5] At the same time, the Commission adopted Exchange Act Rule 17a-14 (CFR 240.17a-14) and Form CRS (17 CFR 249.640) under the Exchange Act.[6]

As part of new Rule 17a-14 and Form CRS (referred to collectively herein as "Form CRS"), and Regulation Best Interest, the Commission amended Rule 17a-3 by adding new paragraphs (a)(24) and (a)(35),[7] respectively. 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)(35) of Rule 17a-3 into this information collection.

Regulation Best Interest and Form CRS do not change any of the existing collections of information that are already in Rule 17a-3. This Supporting Statement discusses only the new collections of information that are being added by Regulation Best Interest and Form CRS.

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 Rule 17a-3(a)(35) and the amendment to Rule 17a-4(e)(5)[8] will assist a broker-dealer in supervising and

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5 *See* Securities Exchange Act Release No. 86031 (Jun. 5, 2019), 84 FR 33318 (Jul. 12, 2019) ("Regulation Best Interest Adopting Release"); *see also* Securities Exchange Act Release No. 83062 (Apr. 18, 2018) [83 FR 21574] (May 9, 2018) ("Regulation Best Interest Proposing Release"). Because Regulation Best Interest has its own OMB Control Number, a separate supporting statement is being submitted.

6 *See Form CRS Relationship Summary; Amendments to Form ADV* Exchange Act Release No. 86032, Advisers Act Release No. 5247, File No. S7-08-18 (June 5, 2019) ("Relationship Summary Adopting Release"). *See also* Release No. 34-83063, IA-4888, File No. S7-08-18 (Apr. 18, 2018), 83 FR 23848 (May 23, 2018) ("Relationship Summary Proposal").

7 Paragraph (a)(35) was originally proposed to be added as paragraph (a)(25).

8 As part of adopting Regulation Best Interest, the Commission also amended 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)(35), in addition to the existing requirement to retail information obtained pursuant to Rule 17a-3(a)(17). Similarly, in addition to Form CRS and Rule 17a-14, the Commission also adopted Exchange Act Rule 17a-4(e)(10) requiring retention of all records required pursuant to §240.17a-3(a)(24), as well as a copy of each Form CRS. Because the recordkeeping obligations have been adopted under Rule 17a-4, which has its own OMB Control Number, a separate supporting statement is being submitted to address these amendments.

assessing internal compliance with Regulation Best Interest. Records made and retained in accordance with Rule 17a-3(a)(24) and the addition of paragraph (e)(10) to Rule 17a-4 will assist a broker-dealer in supervising and assessing internal compliance with proposed Rule 17a-14 and Form CRS.

Rule 17a-3(a)(24) requires SEC-registered broker-dealers to make a record indicating the date that each Form CRS was provided to each retail investor, including any Form CRS provided before the retail investor opens an account.[9] The Commission staff will use this collection of information in its examination and oversight program.

Rule 17a-3(a)(35) requires 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. Rule 17(a)(35) also clarifies that the neglect, refusal, or inability of the retail customer to provide or update the information described above, shall excuse the broker, dealer or associated person from obtaining that required information.

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 addition of paragraphs (a)(24) and (a)(35) to Rule 17a-3. The 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 additions of paragraphs (a)(24) and (a)(35) 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, Rule 17a-3(a)(24) requires broker-dealers to make a record indicating the date that a Form CRS was provided to each retail investor, including any Form CRS provided before the retail investor opens an account. No other rule requires broker-dealers to provide the same information that is required by Rule 17a-3(a)(24).

As noted above, Rule 17a-3(a)(35) requires a broker-dealer to make a record of all information collected from and provided to the retail customer pursuant to Regulation Best Interest. The Commission understands that broker-dealers currently make records of relevant customer investment profile information, and therefore assumes that no additional record-making

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[9] 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 have their own OMB Control Number, for which a separate supporting statement is being submitted.

obligations will arise as a result of broker-dealers' or their registered representatives' collection of information from retail customers.[10]

In addition, Rule 17a-3(a)(35) requires 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." The Commission understands 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 understanding of current broker-dealer practices, for purposes of compliance with Rule 17a-3(a)(35), that broker-dealers will 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 Regulation Best Interest. The Commission is adopting the provision substantially as proposed but redesignating it as new paragraph (a)(35) of Rule 17a-3, instead of (a)(25).

5. Effect on Small Entities

The Regulatory Flexibility Act ("RFA")[11] requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[12] of the Administrative Procedure Act,[13] 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."[14] 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,[15] or, if not required to file such statements, had total capital (net

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10 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 the Regulation Best Interest Adopting Release and the Relationship Summary Adopting Release. With respect to the requirement that a record be made of all information from the retail customer, we believe that Rule 17a-3(a)(35) will not impose any new substantive burdens on broker-dealers. As discussed in the Regulation Best Interest Adopting Release, we believe that the obligation to exercise reasonable diligence, care and skill will 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 will need to adhere to the enhanced best interest standard of Regulation Best Interest.

11 5 U.S.C. 601 *et seq.*

12 5 U.S.C. 603(a).

13 5 U.S.C. 551 *et seq.*

14 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.

15 *See* 17 CFR 240.17a-5(d).

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.[16]

Based on 2018 FOCUS Report data about the broker-dealer retail market, the Commission believes that approximately 756 broker-dealers – with an estimated 5,281 retail customer accounts – would qualify as small entities subject to Regulation Best Interest and Form CRS and the related new record-making and recordkeeping requirements. However, Regulation Best Interest and Form CRS do not distinguish between small entities and other broker-dealers. The Commission recognizes that different broker-dealers may require different amounts of time or external assistance in preparing for the new rules. The Commission believes, however, that imposing different requirements on smaller firms would not be consistent with investor protection and the purposes of Regulation Best Interest. Similarly, the Commission believes it will be inappropriate to establish different recordkeeping requirements for small entities in connection with Form CRS, because the recordkeeping requirements will facilitate the Commission's ability to inspect for and enforce compliance with firms' obligations with respect to the relationship summary, which is important for retail investor clients and customers of both large and small firms. 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 5 CFR 1320.5(d)(2).

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16 *See* 17 CFR 240.0-10(c).

8. Consultations Outside the Agency

The Commission issued releases 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),[17] and proposed Regulation Best Interest, which includes Rule 17a-3(a)(35).[18] 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. Comments received on this rulemaking are posted on the Commission's public website, and made available through http://www.sec.gov/rules/proposed.shtml. The Commission considered all comments received prior to publishing the final rule, and explained in the adopting releases how the final rules respond to such comments, in accordance with 5 C.F.R. 1320.11(f).

Comments Regarding Regulation Best Interest and Rule 17a-3(a)(35)

Several commenters expressed concern that the proposed rule amendment would significantly expand recordkeeping requirements.[19] One commenter expressed concern that the record retention requirements of the proposed new paragraph to Rule 17a-3 would apply to each recommendation made by the broker-dealer rather than to each account (as required by existing paragraph (a)(17) of Rule 17a-3, which operates on a per-account basis). Another commenter requested clarification that "the current books and records requirement is sufficient to meet record-keeping requirements to satisfy Reg BI," adding that the Commission should "affirm that Reg BI does not create new record-keeping requirements to prove that an advisor acted in a client's best interest."[20]

The Commission notes in the Regulation Best Interest Adopting Release that the proposed new requirements of Rule 17a-3 are not designed to create additional, standalone burdens for broker-dealers but instead to provide a means by which they can demonstrate, and Commission examiners can confirm, their compliance with the new substantive requirements of Regulation Best Interest. As explained in the Regulation Best Interest Adopting Release,[21] it would not be accurate to state, as suggested by the commenter, that the Commission's current books and records requirements for broker-dealers are sufficient to meet recordkeeping requirements to satisfy Regulation Best Interest. The additional books and records requirements the Commission adopted are designed to allow firms to demonstrate compliance with the

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17 Relationship Summary Proposing Release.

18 Regulation Best Interest Proposing Release.

19 *See* Letter from Kenneth E. Bentsen, Jr., President and Chief Executive Officer, SIFMA (Aug. 7, 2018) ("SIFMA August 2018 Letter"); Letter from Chris Lewis, General Counsel, Edward Jones (Aug. 7, 2018) ("Edward Jones Letter"); Letter from Karen L. Sukin, Executive Vice President, Deputy General Counsel, Primerica (Aug. 7, 2018) ("Primerica Letter").

20 *See* Letter from Paul C. Reilly, Chairman and CEO, Raymond James Financial (Aug. 7, 2018) ("Raymond James Letter").

21 *See* Section II.D.

substantive requirements of Regulation Best Interest. The Commission further notes that the new record-making requirements would not require the duplication of existing records.[22]

Several commenters requested clarification that, except with respect to the specific recordkeeping requirements in the rule text, Regulation Best Interest does not require additional records (e.g., records to evidence best interest determinations on a recommendation-by-recommendation basis).[23] One commenter also stated that, as drafted, there are significant obstacles and costs, including increased privacy and cybersecurity risks, that would result from implementing the proposed new rule, in particular with respect to the "all information collected from….the retail customer" requirement.[24]

In response to comments, the Commission clarified that while the substantive requirements of Regulation Best Interest apply on a recommendation-by-recommendation basis, consistent with our approach elsewhere, we are not requiring that broker-dealers create and maintain records to evidence best interest determinations on a recommendation-by-recommendation basis.

In addition, in response to requests from commenters for confirmation that the proposed record-making requirements do not contemplate broker-dealers needing to create and maintain records of why certain products were recommended over others on a recommendation-by-recommendation basis,[25] we confirm that broker-dealers are not expected to maintain records comparing potential investments to one another so long as they are able to demonstrate that each individual recommendation actually made to a customer meets the requirements of Regulation Best Interest on its own.

In response to the commenter's privacy and cybersecurity concerns with respect to the proposed requirement to make a record of all information collected from the customer pursuant to Regulation Best Interest, as noted in the Proposing Release[26] although a broker-dealer's customer *obligations* under Regulation Best Interest (e.g., the Care Obligation) go beyond those set forth in the FINRA's suitability rule, the concept of the "customer's investment profile" that a broker-dealer would be required to compile—that is, the customer *information* it would be required to obtain—pursuant to Regulation Best Interest is consistent with that under FINRA's suitability rule. As such, the Commission believes that since broker-dealers are already required

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22 In response to comments, the Regulation Best Interest Adopting Release also provides clarifications regarding "related and underlying communications," the treatment of information collected from or provided to a retail customer whether orally or in writing, among other guidance. *See* Section II.D.

23 *See* SIFMA August 2018 Letter; Edward Jones Letter; Letter from Anne Tennant, Managing Director and General Counsel, Morgan Stanley (Aug. 7, 2018) ("Morgan Stanley Letter"); Letters from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce ("CCMC") (Aug. 7, 2018) (supplemented by letter dated Sep. 5, 2018) ("CCMC Letters").

24 *See* Primerica Letter.

25 *See* SIFMA August 2018 Letter; CCMC Letters.

26 Proposing Release at 21611 (noting that Retail Customer Investment Profile is consistent with FINRA Rule 2111(a) (Suitability)).

to seek to obtain identical types of retail customer information pursuant to the FINRA suitability rule, broker-dealers should already have in place policies and procedures, including training programs, to address such privacy and cybersecurity concerns.

A number of commenters highlighted practical difficulties associated with delivering disclosure either in writing, or prior to or at the time of a recommendation in some instances.[27] Although Regulation Best Interest requires that the Disclosure Obligation be made "in writing," we recognize the challenges associated with providing written disclosure in each instance that disclosure may be required. For example, a broker-dealer may need to supplement, clarify or update written disclosure it has previously made before or at the time it provides a customer with a recommendation. As we stated in the Proposing Release, we recognized that broker-dealers may provide recommendations by telephone and may need to offer clarifying disclosure orally in some instances subject to certain conditions, such as a dual-registrant informing a retail customer of the capacity in which the dual-registrant is acting in conjunction with a recommendation. We stated that a broker-dealer could orally clarify the capacity in which it is acting at the time of the recommendation if it had previously provided written disclosure to the retail customer beforehand disclosing its capacity as well as the method it planned to use to clarify its capacity at the time of the recommendation

Similarly, although Regulation Best Interest requires a broker-dealer to disclose, prior to or at the time of a recommendation, all material facts relating to the scope and terms of the relationship with the retail customer and relating to conflicts of interest that are associated with the recommendation, we recognize that in some instances a broker-dealer may not have all the material facts at the time of the recommendation, or that such disclosure is provided to the retail customer pursuant to an existing regulatory obligation, such as the delivery of a product prospectus or a trade confirmation, after the execution of the trade. We continue to believe that some flexibility with respect to the provision by broker-dealers of written and oral disclosure, as well as with respect to the timing that disclosure is made, is appropriate in certain circumstances, such as when a broker-dealer updates its written disclosures orally in order to reflect facts not reasonably known at the time the written disclosure is provided.

Accordingly, in the Regulation Best Interest Adopting Release, the Commission stated that, in such circumstances, a broker-dealer may satisfy its Disclosure Obligation by making supplemental oral disclosure not later than the time of the recommendation, provided that the broker-dealer maintains a record of the fact that oral disclosure was provided to the retail customer. As a result, we have added a new information collection relating to this record of oral disclosure.

Comments Regarding Form CRS

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[27] *See* SIFMA August 2018 Letter; Morgan Stanley Letter; Letter from Ann M. Kappler, Senior Vice President, Deputy General Counsel, Prudential Financial (Aug. 7, 2018).

In regard to Form CRS, some commenters expressed concern with the potential costs and feasibility of complying with the proposed recordkeeping requirements for broker-dealers.[28] Several commenters argued that keeping records of when a Form CRS was given to a prospective retail investor would be unnecessarily burdensome for firms and would likely provide *de minimis* benefits.[29] Some commenters stated that most firms' recordkeeping systems and procedures are not designed to maintain records relating to prospective clients and that conforming such systems and procedures to the proposed rule requirements would be burdensome and costly and would not result in an offsetting benefit.[30] Others noted they may have to retain records for an indefinite length of time because their interactions with prospective clients about engaging services often span weeks, months or years and may include numerous phone calls, meetings or other forms of contact.[31]

As an alternative, commenters suggested that firms only be required to maintain a record of the most recent date they delivered the Form CRS to a prospective client that becomes an actual client preceding the opening of an account.[32] Commenters suggested only requiring a record that the Form CRS was delivered at account opening or when a retail investor becomes an investment advisory client.[33]

The inclusion of the recordkeeping requirements in the amended rules will impose costs on firms in the form of revised recordkeeping policies and procedures and possible modifications to their recordkeeping systems. The record requirements, however, may be less burdensome if their recordkeeping and compliance systems are already capable of creating and maintaining records related to communications with prospective clients. Further, these recordkeeping requirements may benefit firms by assisting them in monitoring their compliance with the Form CRS delivery requirements. Finally, these records will facilitate the Commission's ability to inspect for and enforce compliance with the Form CRS requirements. Accordingly, we are adopting Rule 17a-3(a)(24) as proposed.

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

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28 *See, e.g.*, CCMC Letters; Comment Letter of the Committee of Annuity Insurers (Aug. 7, 2018) ("Committee of Annuity Insurers Letter"); Edward Jones Letter; Morgan Stanley Letter; Primerica Letter; SIFMA August 2018 Letter.

29 *See id.*

30 *See, e.g.*, Committee of Annuity Insurers Letter; Edward Jones Letter; Morgan Stanley Letter; Primerica Letter; SIFMA August 2018 Letter.

31 *See, e.g.*, Edward Jones Letter; Primerica Letter; SIFMA August 2018 Letter.

32 *See, e.g.*, CCMC Letters; SIFMA Letter.

33 *See, e.g.*, SIFMA August 2018 Letter; Morgan Stanley; Edward Jones Letter.

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 in the amendments that were part of the recent rulemaking for Regulation Best Interest and Form CRS, and those information collections do not collect any Personally Identifiable Information ("PII").

Some of the information collections that were in existence prior to the recent rulemaking for Regulation Best Interest and Form CRS may require collections of PII. Those collections will be discussed in a separate Supporting Statement to request an extension for the existing information collections in the rule.**12. Information Collection Burden**

As noted above, Regulation Best Interest and Form CRS require the collection of information. The Commission anticipates that the respondents will incur the following recordkeeping burdens in connection with the new regulations. Rule 17a-3 already has a number of collections of information that have been approved by OMB and that are not being affected by the Regulation Best Interest and Form CRS rulemakings. Those collections of information are summarized in a chart at the end of Item 12.

Summary of Hourly Burdens being added by Form CRS and Regulation BI								
Name of Information Collection	**Number of Entities Impacted**	**Small Business Entities Affected**	**Type of Burden**	**Ongoing or Initial Burden**	**Annual Responses per Entity**	**Burden per Entity per Response**	**Annual Burden Per Entity**	**Annual Industry Burden**
Form CRS and Rule 17a-3(a)(24)								
Rule 17a-3(a)(24): Record of Date Form CRS Provided to Each Customer and Prospective Customer	2766	756	Recordkeeping	Ongoing	1	0.5	0.5	1383
				Initial One-Time	N/A	N/A	N/A	
Regulation Best Interest and Rule 17a-3(a)(35)								
Rule 17a-3(a)(35): Record of Identity of Associate Person Responsible for Account	2010	0	Recordkeeping	Ongoing	N/A	N/A	N/A	1341
				Initial One-Time	1	2	0.667	

-*Large Broker-Dealers*								
Rule 17a-3(a)(35): Record of Identity of Associate Person Responsible for Account/ Individual Burden	2766	756	Recordkeeping	Ongoing	N/A	N/A	N/A	1,359,983
				Initial One-Time	36,876	0.0133333	491.67877	
Rule 17a-3(a)(35): Record of Oral Disclosure	2766	756	Recordkeeping	Ongoing	19,175	0.02	383.5	1,060,761
				Initial One-Time	N/A	N/A	N/A	
TOTAL Annual Industry Burden								**2,423,468**

Regulation Best Interest imposes a best interest obligation on a broker-dealer when making recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to "retail customers." Form CRS and Rule 17a-14 require broker-dealers that offer services to retail investors to prepare, file through Web CRD®, post to the broker-dealer's website (if available), and deliver to retail investors a brief relationship summary. As of December 31, 2018, 3,764 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 73.5% of this population, or 2,766 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)(35), 17a-4(e)(5), and 17a-4(e)(10).[34]

As with broker-dealers, Regulation Best Interest imposes 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 believes that approximately 428,404 natural persons would qualify as retail-facing, registered representatives at standalone broker-dealers or dually-registered firms,[35]

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34 As of December 31, 2018, 3,764 broker-dealers filed Form BD. Retail sales by broker-dealers were obtained from Form BR.

35 This estimate is based on the following calculation: (504,005 total licensed representatives (including representatives of investment advisers)) x (15% (the percentage of total licensed representatives who are standalone investment adviser representatives)) = 75,601 representatives

and would therefore likely be subject to proposed Regulation Best Interest, and the proposed amendments to Rules 17a-3(a)(35) and 17a-4(e)(5).[36] 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 paragraphs (a)(24) and (a)(35) of Rule 17a-3 into the Rule 17a-3 information collection.

Rule 17a-3(a)(24): Record of Date Form CRS Provided to Each Customer and Prospective Customer

Rule 17a-3(a)(24) requires SEC-registered broker-dealers to make a record indicating the date that a Form CRS was provided to each customer and to each prospective customer.

As discussed above, several commenters suggested that our estimated burdens for the Form CRS recordkeeping obligations were too low.[37] Some commenters argued that keeping records of when a Form CRS was given to prospective retail clients would be unnecessarily burdensome or not feasible, and was not adequately considered in the Commission's burden estimates.[38] One of these commenters said that it would be difficult for firms to integrate pre-relationship delivery dates into their operational systems and procedures, and that there is no way to track when a disclosure is accessed on a website.[39]

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at standalone investment advisers. To isolate the number of representatives at standalone broker-dealers and dually-registered firms, we have subtracted 75,601 from 504,005, for a total of F retail-facing, licensed representatives at standalone broker-dealers or dually-registered firms.

36 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.

37 *See, e.g.,* CCMC Letter; SIFMA August 2018 Letter; *see also* NSCP Letter (estimating 80-500 hours to prepare, deliver, and file Form CRS, including recordkeeping policies and procedures).

38 *See, e.g.*, CCMC Letter; SIFMA Letter; Committee of Annuity Insurers Letter; Edward Jones Letter. A few others stated that creating recordkeeping policies and procedures relating to how professionals respond to "key questions" would be burdensome and extremely difficult. *See, e.g.*, LPL Financial Letter. Although the final instructions require "conversation starter" questions that are similar to the proposed "key questions," we are not increasing the burden as urged by commenters. As discussed in a separate supporting statement for Form CRS, we increased the burden estimates for the initial preparation of the relationship summary, acknowledging, among other things, that certain broker-dealers that provide services only online will incur additional burdens to develop written answers to the conversation starters and make those available on their websites with a hyperlink to the appropriate page in the relationship summary for these documents. However, we do not expect these broker-dealers to incur additional recordkeeping burdens under amendments to Exchange Act rule 17a-3 because we are not establishing new or separate recordkeeping obligations related to the conversation starters or the answers provided by firms in response to the conversation starters.

39 *See* SIFMA August 2018 Letter.

After consideration of comments, and because broker-dealers do not currently maintain similar records like the relationship summary, we are revising our estimate of the time that it would take each broker-dealer to create the records required by new paragraph (a)(24) of rule 17a-3 as adopted from 0.1 hours to 0.5 hours. The incremental hour burden for broker-dealers to create the records required by new paragraph (a)(24) of rule 17a-3 as adopted will therefore be 1,383 hours.[40] We also do not expect that broker-dealers will incur external costs for the requirement to make records because we believe that broker-dealers will make such records in a manner similar to their current recordkeeping practices, including those that apply to communications and correspondence with retail investors. **These estimates result in a total annual estimated recordkeeping burden for Form CRS Records for All BDs of 1,383 hours.**

Regulation Best Interest and Rule 17a-3(a)(35)

Rule 17a-3(a)(35) requires a broker-dealer to make a record of all information collected from and provided to the retail customer pursuant to Regulation Best Interest, as well as the identity of each natural person who is an associated person of a broker or dealer, if any, responsible for the account.[1] This requirement applies with respect to each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is provided. The neglect, refusal, or inability of a retail customer to provide or update any such information will, however, excuse the broker-dealer from obtaining that information.

Due to changes in the number of broker-dealers and costs estimated for certain services, we are revising our estimates from those in the Proposing Release. However, while we understand commenters' concerns that the estimates are lower than what would actually be required to comply with Regulation Best Interest, we believe the estimates are generally accurate in light of the increased specificity in Regulation Best Interest on how to comply with the component obligations, including the Disclosure Obligation.[41]

Rule 17a-3(a)(35): Record of Information Collected From and Provided to the Retail Customer Pursuant to Regulation Best Interest

The Commission understands 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.[42]

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40 2,766 broker-dealers x 0.5 hours annually = 1,383 annual hours for recordkeeping.

41 *See, e.g.,* Raymond James Letter; CCMC Letters; SIFMA August 2018 Letter.

42 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 the Regulation Best Interest Adopting Release and the Relationship Summary Adopting Release. With respect to the requirement that a record be made of all information from the retail customer, we believe that Rule 17a-3(a)(35) would not impose any new substantive burdens on broker-dealers. As discussed in the Regulation Best Interest Adopting Release, we continue to believe that the obligation to exercise reasonable diligence, care and skill will 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.

Rule 17a-3(a)(35): Record of Identity of Associate Person Responsible for Account/ Firm Burden

In addition, Rule 17a-3(a)(35) requires 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." The Commission continues to believe that broker-dealers likely make such records in the ordinary course of their business. However, we are assuming, for purposes of compliance with proposed Rule 17a-3(a)(35), that broker-dealers will 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 Regulation Best Interest. For small broker-dealers, the use of outside counsel would result in a cost burden, which is discussed in Item 13 below. For large broker-dealers, we estimate that the initial burden will be 2 hours for each broker-dealer: 1 hour for compliance personnel and 1 hour for legal personnel. The Commission therefore estimates the aggregate initial one-time burden for large broker-dealers to be approximately 4,020 burden hours.[43] **These estimates result in a total annual estimated recordkeeping burden for Identity of Associated Person Responsible for the Account for Large BDs of 1,341 hours.**

Rule 17a-3(a)(35): Record of Identity of Associated Person Responsible for Account/ Individual Burden

Finally, we estimate it will 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 one-time burden of 4,080,000 hours, or approximately 1,475 hours per broker-dealer (put another way, each broker-dealer would incur the burden for each of 36,876 retail customer accounts[44]) for the first year after Regulation Best Interest is in effect.[45]

The Commission does not believe that the identity of the registered representative responsible for the retail customer's account will change. Accordingly, we continue to believe that there are no ongoing costs and burdens associated with this record-making requirement of Rule 17a-3(a)(35). **These estimates result in a total annual estimated recordkeeping burden**

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43 This estimate is based on the following calculation: (2 burden hours per broker-dealer) x (2,010 large broker-dealers) = 4,020 aggregate burden hours per year.

44 This estimate is based on the following calculation: (102 million retail customer accounts) / (2766 broker-dealers) = 36,876 retail customer accounts per broker-dealer.

45 These estimates are based on the following calculations: (0.04 hours per customer account) x (102 million retail customer accounts) = 4,080,000 aggregate burden hours. Conversely, (4,080,000 burden hours) / (2,766 broker-dealers) = 1,475 hours per broker-dealer for the first year after Regulation Best Interest is in effect. (102 million retail customer accounts) / (3 years) = 34 million annual responses. The costs and burdens associated with the delivery of the 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 3235-0762.

for Identity of Associated Person Responsible for the Account for All BDs of 1,359,983 hours.

Rule 17a-3(a)(35): Record of Oral Disclosure

In cases where broker-dealers choose to meet part of the Disclosure Obligation orally under the circumstances outlined in Section II.C.1 of the Regulation Best Interest Adopting Release, we believe the requirement to maintain a record of the fact that oral disclosure was provided to the retail customer will trigger a record-making obligation under paragraph (a)(35) and we estimate that this would take place among 52% of a broker-dealer's retail customer accounts (and thus 52% of a registered representative's retail customer accounts) annually.[46] **These estimates result in a total annual estimated recordkeeping burden for a Record of Oral Disclosures for All BDs of 1,060,761 hours**.[47]

13. Costs to Respondents

The Commission does not expect respondents to incur external costs in connection with Rule 17a-3(a)(24). The external costs in connection with Rule 17a-3(a)(35) are reflected in the chart below.

Summary of Hourly Costs being added by Regulation BI								
Name of Information Collection	**Number of Entities Impacted**	**Small Business Entities Affected**	**Type of Burden**	**Ongoing or Initial Burden**	**Annual Responses per Entity**	**Burden per Entity per Response**	**Annual Burden Per Entity**	**Annual Industry Burden**

[46] The Commission believes (and our experience indicates) that broker-dealers will use oral disclosure rarely, and primarily when making disclosures regarding a change in capacity. We do not have reliable data to determine the precise number of retail customers that have both a brokerage and an advisory account with a dually registered associated person. Approximately 52% of registered representatives were dually registered as investment adviser representatives at the end of 2018. As a result, we have assumed for purposes of this analysis that this will take place among 52% of all retail customer accounts at broker-dealers annually. This estimate is likely over inclusive, as it includes all retail customer accounts at all broker-dealers (as opposed to only retail customer accounts where the retail customer has both a brokerage and advisory account with a dually registered financial professional), and under inclusive, as it assumes that such an oral disclosure will happen annually (as opposed to multiple times a year).

[47] (52%) x (102 million retail customer accounts) x (0.02 hours for recording each oral disclosure relating to a retail customer's account) = 1,060,800 aggregate burden hours. Conversely, 1,060,800 aggregate burden hours / 2,766 broker-dealers = 383.5 burden hours per broker-dealer per year. Put another way, assuming each broker-dealer has 36,876 retail customer accounts (*See* note 44 supra), (52%) x (36,876 retail customer accounts per broker-dealer) = 19,175 affected retail customer accounts. (19,175 affected retail customer accounts) x (0.02 hours for recording each oral disclosure relating to a retail customer's account) = 383.5 burden hours per broker-dealer.

Regulation Best Interest and Rule 17a-4(a)(35)								
Rule 17a-3(a)(35): Record of Identity of Associate Person Responsible for Account/ Firm Burden *-Small Broker-dealers*	756	756	Recordkeeping	Ongoing	1	$497	$497	$375,732
				Initial One-Time	N/A	N/A	N/A	

Rule 17a-3(a)(35): Record of Identity of Associate Person Responsible for Account/ Firm Burden

To meet the requirement under Rule 17a-3(a)(35) to make a record of the "identity of each natural person who is an associated person, if any, responsible for the account," we believe that small broker-dealers will require, on average, approximately 1 hour per year for outside legal counsel, at an updated average rate of $497/hour, for an average annual cost of $497 for each small broker-dealer to update an account disclosure document. The projected aggregate initial cost for small broker-dealers is therefore estimated to be $375,732 per year.[48] **These estimates result in a total annual estimated recordkeeping cost burden for Rule 17a-3(a)(35) for small Broker-Dealers of $375,732 per year.**

14. Costs to Federal Government

There will be no additional costs to the Federal Government.

15. Explanation of Changes in Burden and Cost

The Commission has revised its burden and cost estimates for some of the information collections, as summarized in the following charts:

Changes in Hourly Burden				
Name of Information Collection	Annual Industry Burden	Annual Industry Burden Previously Reviewed	Change in Burden	Reason for Change
Rule 17a-3(a)(24): Record of Date Form CRS Provided to Each	1383	286	(1097)	Increase in estimated time burden to record date based on comments.

[48] This estimate is based on the following calculation: (1 hour per small broker-dealer) x (756 small broker-dealers) x ($497/hour) = $375,732 in aggregate costs per year.

Customer and Prospective Customer				
Rule 17a-3(a)(35): Record of Identity of Associate Person Responsible for Account	1341	1371	(30)	Decrease in number of large broker-dealers.
Rule 17a-3(a)(35): Record of Identity of Associate Person Responsible for Account/ Individual Burden	1359983	1237612	122371	Increase in number of responses per year.
Rule 17a-3(a)(35): Record of Oral Disclosure	1062144	0	1062144	New rule requirement/IC based on comments.

Changes in Hourly Cost				
Name of Information Collection	Annual Industry Cost	Annual Industry Cost Previously Reviewed	Change in Cost	Reason for Change
Regulation Best Interest and Rule 17a-3(a)(35)	$375,732	$126,181	$249,551	Correction of an error in the estimate for the proposed rule, which results in an increased hour burden.[49] There is also a small decrease in number of small broker-dealers.

The Commission generally believes the previously reviewed burdens and costs relating to the record-making and recordkeeping collections of information are accurate but have updated estimates to reflect a change in the burden of recording certain information, as well as to reflect changes in the number of broker-dealers and costs of certain services since the last estimate.

[49] In calculating the annual cost for purposes of the Proposing Release, the Commission erroneously included this burden as an initial cost as opposed to an ongoing cost. As a result the burden was $126,181 hours but should have been $378,544.

In light of comments received, and because broker-dealers do not currently maintain similar records like the relationship summary, we revised our estimate of the time that it would take each broker-dealer to create the records required by new paragraph (a)(24) of rule 17a-3 as adopted from 0.1 hours to 0.5 hours.

Furthermore, due to changes in the number of broker-dealers and costs estimated for certain service, we revised our estimates from the Proposing Release with respect to paragraph (a)(35) of rule 17a-3. Specifically, we believe that the total annual estimated recordkeeping burden to identify the associated person responsible for an account for large broker-dealers will now be 1,341 hours, while the total annual estimated recordkeeping burden for identifying and recording the associated person responsible for the account for all broker-dealers will be 1,359,983 hours.

Finally, in response to comments and in recognition that certain broker-dealers may choose to meet part of the Disclosure Obligation orally under the circumstances outlined in Section II.C.1. of the Regulation Best Interest Adopting Release, we have estimated a total annual recordkeeping burden for a record of oral disclosure for all broker-dealers of 1,062,144 hours.

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.