

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for Rule 17a-4**  
**OMB No. 3235-0279**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq. **This Supporting Statement includes new collections of information related to a rulemaking that amended this Rule 17a-4 (OMB No. 3235-0279). The collections of information that were previously approved for Rule 17a-4, and that were not part of the recent rulemaking notice and comment process, 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)<sup>1</sup> and 23(a)<sup>2</sup> 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”),<sup>3</sup> 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.

**Recent Rulemaking**

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<sup>1</sup> 15 U.S.C. 78q(a).

<sup>2</sup> 15 U.S.C. 78w(a).

<sup>3</sup> 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

On June 5, 2019, the Commission adopted Rule 15l-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 transaction or investment strategy involving securities to a retail customer (“Regulation Best Interest”).<sup>4</sup> 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.<sup>5</sup>

As part of Regulation Best Interest, the Commission amended Rule 17a-4 by revising paragraph (e)(5). In addition, as part of the separate Commission proposal, of new Rule 17a-14 and Form CRS (referred to collectively herein as “Form CRS”), the Commission added paragraph (e)(10) to Rule 17a-4. 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) and adding the annual burden hours for new paragraph (e)(10) of Rule 17a-4 into this information collection.

This Supporting Statement discusses only the amended and new collections of information that were part of the notice and comment process of the recent rulemaking for Regulation Best Interest and Form CRS.

## **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 Rule 17a-3(a)(35)<sup>6</sup> and the amendment to Rule 17a-4(e)(5) will assist a broker-dealer in supervising and assessing internal compliance

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<sup>4</sup> 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.

<sup>5</sup> 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”). (new Rule 17a-14 and Form CRS under the Exchange Act 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). Because Rule 17a-14 has its own OMB Control Number, a separate supporting statement is being submitted.

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

with Regulation Best Interest.<sup>7</sup> 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.<sup>8</sup>

The amendment of paragraph (e)(5) to Rule 17a-4 provides that all records required pursuant to Rule 17a-3(a)(35) must be retained “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 addition of paragraph (e)(10) to Rule 17a-4 provides that all records required pursuant to Rule 17a-3(a)(24), as well as a copy of each Form CRS, 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, the Commission believes there is no duplication.

As noted above, the amendment to Rule 17a-4(e)(5) requires broker-dealers to retain all records required pursuant to Rule 17a-3(a)(35) “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.” No other rule requires broker-dealers to provide the same information that is required by Rule 17a-4(e)(5).

As noted above, paragraph (e)(10) to Rule 17a-4 provides that all records required pursuant to Rule 17a-3(a)(24), as well as a copy of each Form CRS, must be retained until at

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<sup>7</sup> As part of Regulation Best Interest, 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. 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.

<sup>8</sup> As part of adopting Form CRS, Rule 17a-3(a)(24) requires 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.

least six years after such record or Form CRS is created. No other rule requires broker-dealers to maintain the same information that is required by Rule 17a-4(e)(10).

## 5. Effects on Small Entities

The Regulatory Flexibility Act (“RFA”)<sup>9</sup> requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)<sup>10</sup> of the Administrative Procedure Act,<sup>11</sup> 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.”<sup>12</sup> 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,<sup>13</sup> 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.<sup>14</sup>

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 – qualify as small entities subject to Regulation Best Interest and Form CRS and the 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.

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<sup>9</sup> 5 U.S.C. 601 *et seq.*

<sup>10</sup> 5 U.S.C. 603(a).

<sup>11</sup> 5 U.S.C. 551 *et seq.*

<sup>12</sup> 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.

<sup>13</sup> *See* 17 CFR 240.17a-5(d).

<sup>14</sup> *See* 17 CFR 240.0-10(c).

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, Regulation Best Interest, 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.

## **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.

As amended, Rule 17a-4(e)(5) requires a broker-dealer to maintain all account record information required pursuant to Rule 17a-3(a)(17) and all records required pursuant to Rule 17a-3(a)(35), 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.<sup>15</sup> The addition of Rule 17a-4(e)(10) requires a broker-dealer to maintain all records required pursuant to Rule 17a-3(a)(24) and a copy 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**

As part of the 2019 Rulemaking, 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-4(e)(10),<sup>16</sup> and proposed Regulation Best Interest, which includes Rule 17a-4(e)(5).<sup>17</sup> 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 proposed 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

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<sup>15</sup> See 17 CFR 240.17a-4.

<sup>16</sup> Relationship Summary Proposing Release.

<sup>17</sup> Regulation Best Interest Proposing Release.

in the adopting releases how the final rules responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

*Comments Regarding Regulation Best Interest and the Amendment to Rule 17a-4(e)(5)*

Several commenters expressed concern that the proposed rule amendment would significantly expand recordkeeping requirements.<sup>18</sup> One 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.”<sup>19</sup> As explained in the Regulation Best Interest Adopting Release,<sup>20</sup> 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 substantive requirements of Regulation Best Interest.

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).<sup>21</sup> 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.<sup>22</sup> 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, the Commission is not requiring that broker-dealers create and maintain records to evidence best interest determinations on a recommendation-by-recommendation basis.

A number of other comments addressed the requirements under Rule 17a-3, which are described in a separate Supporting Statement for that rule.

*Comments Regarding Form CRS and Rule 17a-4(e)(10)*

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<sup>18</sup> 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”).

<sup>19</sup> See Letter from Paul C. Reilly, Chairman and CEO, Raymond James Financial (Aug. 7, 2018) (“Raymond James Letter”).

<sup>20</sup> See Section II.D.

<sup>21</sup> 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”).

<sup>22</sup> See Primerica Letter.

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.<sup>23</sup> Several commenters argued that keeping records of when a relationship summary was given to a prospective retail investor would be unnecessarily burdensome for firms and would likely provide *de minimis* benefits.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

As an alternative, commenters suggested that firms only be required to maintain a record of the most recent date they delivered the relationship summary to a prospective client that becomes an actual client preceding the opening of an account.<sup>27</sup> Commenters suggested only requiring a record that the relationship summary was delivered at account opening or when a retail investor becomes an investment advisory client.<sup>28</sup>

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 relationship summary delivery requirements. Finally, these records will facilitate the Commission's ability to inspect for and enforce compliance with the relationship summary requirements. Accordingly, the Commission adopted Rule 17a-4(a)(25) as proposed.

## 9. Payment or Gift

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

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<sup>23</sup> See, e.g., Comment Letter of the Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce (Sept. 5, 2018) ("CCMC Letter"); Comment Letter of the Committee of Annuity Insurers (Aug. 7, 2018) ("Committee of Annuity Insurers Letter"); Comment Letter of Edward D. Jones and Co., L.P. (Aug. 7, 2018) ("Edward Jones Letter"); Comment Letter of Morgan Stanley Smith Barney, LLC (Aug. 7, 2018) ("Morgan Stanley Letter"); Comment Letter of Primerica (Aug. 7, 2018) ("Primerica Letter"); Comment Letter of the Securities Industry and Financial Markets Association (Aug. 7, 2018) ("SIFMA Letter").

<sup>24</sup> See *id.*

<sup>25</sup> See, e.g., Committee of Annuity Insurers Letter; Edward Jones Letter; Morgan Stanley Letter; Primerica Letter; SIFMA Letter.

<sup>26</sup> See, e.g., Edward Jones Letter; Primerica Letter; SIFMA Letter.

<sup>27</sup> See, e.g., CCMC Letter; SIFMA Letter.

<sup>28</sup> See, e.g., SIFMA Letter; Morgan Stanley; Edward Jones Letter.

## 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 (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

Rule 17a-4 already has collections of information that have been approved by OMB and (with the exception of Rule 17a-4(e)(5)), that are not being affected by the Regulation Best Interest and Form CRS rulemakings. A summary and discussion of the new collections of information in the 2019 Amendments is immediately below. The collections of information in Rule 17a-4 that were not part of the recent rulemaking notice and comment process are not being revised and are not summarized here.

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.

**Summary of Hourly Burdens being added by Regulation Best Interest and Form CRS**

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
<i>Regulation Best Interest and Rule 17a-4(e)(5)</i>								
<i>Rule 17a-4(e)(5): New or Modified Documents</i>	2,766 <sup>29</sup>	756	Recordkeeping	Initial One-Time	244,627	0.0067	1639.0009 <sup>30</sup>	4,533,476

<sup>29</sup> Based on data obtained from Form BR, the Commission 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).

<sup>30</sup> This estimate is based on the following calculation: (4 documents per customer account) x (102 million retail customer accounts) x (2 minutes per document) / 60 minutes = 13,600,000 aggregate burden hours. (13,600,000/2766 broker-dealers)/3=1,639 hours per year.

<i>Being Added to a Record Retention System in Connection with Regulation BI</i>								
<i>Rule 17a-4(e)(5): Ongoing Recordkeeping in Connection with Regulation BI</i>	2,766	756	Recordkeeping	Ongoing	147,505 <sup>31</sup>	0.011	1622.555	4,487,987
<b>Form CRS and Rule 17a-4(e)(10)</b>								
<i>Rule 17a-4(e)(10): Maintenance of Records in Connection with Rule 17a-14 and Form CRS</i>	2,766	756	Recordkeeping	Ongoing	1	0.1	0.1	277
				Initial One-Time	N/A	N/A	N/A	

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. 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 amendment to Rule 17a-4(e)(5) and new Rule 17a-4(e)(10), into this information collection.

*Regulation Best Interest and Rule 17a-4(e)(5)*

Rule 17a-4(e)(5) requires broker-dealers to retain all records of the information collected from or provided to each retail customer pursuant to Regulation Best Interest for at least six years after the earlier of the date the account was closed or the date on which the information was last replaced or updated. The Commission believes the following records would likely need to be retained pursuant to proposed Rule 17a-3(a)(35): (1) existing account disclosure documents; (2) comprehensive fee schedules; (3) disclosures identifying material conflicts; and (4) memorialized oral disclosures under the circumstances outlined in Section II.C.1 of the

<sup>31</sup> 102 million retail customer accounts \*4 documents per account=408,000,000. 408,000,000/2,766=147,505 responses per broker-dealer. The number of annual responses per entity varies from that in the Proposing Release because the Commission estimates that broker-dealers would need to retain four records and in the Proposing Release erroneously estimated that broker-dealers would retail *five* account documents and the number of retail customer accounts increased over time. See *infra* note 32.

Regulation Best Interest Adopting Release, *Oral Disclosure or Disclosure After a Recommendation*.<sup>32</sup>

Based on the assumption that broker-dealers will rely on existing infrastructures to satisfy the recordkeeping obligations of Regulation Best Interest and the amendment to Rule 17a-4(e)(5), **the Commission estimates the one-time initial burden for broker-dealers to add new documents or modify existing documents to the broker-dealer's existing retention system would be 1,639,0009 hours per broker-dealer or 4,533,476 burden hours for all broker-dealers**<sup>33</sup> (put another way, each broker-dealer would incur the burden for each of the 36,876 retail customer accounts)<sup>34</sup> assuming a broker-dealer would need to upload or file each of the four account documents discussed above for each retail customer account.<sup>35</sup> **Furthermore, the Commission estimates that the approximate ongoing burden associated with the recordkeeping requirement of amendment to Rule 17a-4(e)(5) is 1,622,555 hours per broker-dealer or 4,487,987 burden hours per year.**<sup>36</sup>

*Form CRS and Rule 17a-4(e)(10)*

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<sup>32</sup> While we estimate broker-dealers will likely need to retain these four 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. In the Proposing Release, we identified four records that would likely need to be retained pursuant to amended Rule 17a-3(a)(25) (now reflected as Rule 17a-3(a)(35)): (1) a standardized Relationship Summary document; (2) existing account disclosure documents; (3) a comprehensive fee schedule; and (4) disclosures identifying material conflicts. However, in calculating the estimated burden for broker-dealers to add new documents or modify existing documents to the broker-dealer's existing retention system, we erroneously assumed a broker-dealer would upload or file *five* account documents, as opposed to the *four* account documents identified in the Proposing Release. See Proposing Release at 21673-21674. In addition, while the burden for broker-dealers to retain a standardized relationship summary was included in the Regulation Best Interest Proposing Release, it is excluded from the analysis of Rule 17a-4(e)(5) because its associated burden is reflected in the Relationship Summary Adopting Release, and is included in the analysis of Rule 17a-4(e)(10).

<sup>33</sup> This estimate is based on the following calculation: (2766 broker-dealers) x 1,639.0009 hours per broker-dealer=4,533,476 burden hours for all broker-dealers.

<sup>34</sup> This estimate is based on the following calculation: (102 million retail customer accounts)/(2766 broker-dealers) = 36,876 retail customer accounts per broker-dealer.

<sup>35</sup> This estimate is based on the following calculation: (4 documents per customer account) x (102 million retail customer accounts) x (2 minutes per document) / 60 minutes = 13,600,000 aggregate burden hours. As indicated above, the following records would likely need to be retained: (1) existing account disclosure documents; (2) comprehensive fee schedules; (3) disclosures identifying material conflicts; and (4) memorialized oral disclosures under the circumstances outlined in Section II.C.1, Disclosure Obligation, *Oral Disclosure or Disclosure After a Recommendation*.

<sup>36</sup> This estimate is based on the following calculation: (2,766 broker-dealers) x 1,622.555 hours per broker-dealer=4,487,987 burden hours for all broker-dealers.

Rule 17a-4(e)(10) requires broker-dealers subject to Form CRS to maintain each record made pursuant to Rule 17a-3(a)(24) for at least six years. The Commission estimates that this will increase the burden for each such broker-dealer by 0.10 hours, or an estimated aggregate burden of 277 hours on an annual basis.<sup>37</sup> **This estimate results in a total annual estimated recordkeeping burden for Form CRS Records for All BDs of 277 hours.**

### 13. Costs to Respondents

The Commission does not believe there would be additional 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.<sup>38</sup>

### 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. Explanation of Changes in Burden and Cost

In the 2019 rulemaking, the Commission revised its burden estimates from those that were in the proposed rule. The changes in the estimated burdens in the final rule, as compared to the proposed rule, are summarized and explained below.

<b>Changes in Hourly Burden</b>				
<b>Name of Information Collection</b>	<b>Annual Industry Burden</b>	<b>Annual Industry Burden Previously Reviewed</b>	<b>Change in Burden</b>	<b>Reason for Change</b>
<i>Rule 17a-4(e)(5): New or Modified Documents Being Added to a Record Retention System in Connection with Regulation BI</i>	4,533,476	5,291,523	758,047	Reduction in number of account documents a broker-dealer would need to retain, <sup>39</sup> and an adjustment to the hour burden per response.
<i>Rule 17a-4(e)(5): Ongoing Recordkeeping in Connection with Regulation BI</i>	4,487,987	317,333	4,170,654	The burden was proposed as 3,173,334 hours (see footnote 480

<sup>37</sup> 2,766 broker-dealers x 0.1 hours = 277 hours in aggregate.

<sup>38</sup> 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) (now 3(a)(35)), 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.

<sup>39</sup> See *supra* note 32 and accompanying text.

				and accompanying text in the proposing release at 83 FR 21574), but was inadvertently entered into the ROCIS system as 317,333. In addition, there was an increase in number of retail customer accounts and an adjustment to the hour burden per response.
<i>17a-4(e)(10): Recordkeeping of relationship summary and all information required under Rule 17a- 3(a)(24)</i>	277	94	183	Correction of an error in the estimate for the proposed rule. <sup>40</sup> In addition, a decrease in the number of broker-dealer respondents.

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.

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<sup>40</sup> In calculating the annual burden for purposes of the Proposing Release, the Commission erroneously included this burden related to 17a-4(e)(10) as an initial burden as opposed to an ongoing burden. As a result the burden was 94 hours but should have been 286 hours.