

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Rule 17Ab2-2 - Determinations Affecting Covered Clearing Agencies**  
**OMB Control No. 3235-0728**

**A. JUSTIFICATION**

**1. Information Collection Necessity**

**Legal and Administrative Requirements**

i. Title VII of Dodd-Frank Act

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) added new provisions to the Securities Exchange Act of 1934 (“Exchange Act”) that require clearing agencies that clear security-based swaps (“security-based swap clearing agencies”) to register with the Securities and Exchange Commission (“Commission”) and require the Commission to adopt rules with respect to security-based swap clearing agencies.

Specifically, the Dodd-Frank Act added new Section 17A(j) of the Exchange Act, which required the Commission to adopt rules governing security-based swap clearing agencies. The Dodd-Frank Act also added Section 17A(i) of the Exchange Act, which provides the Commission with authority to promulgate rules that establish standards for security-based swap clearing agencies. Compliance with any such rules is a prerequisite to the registration of a clearing agency with the Commission and is also a condition to the maintenance of that security-based swap clearing agency’s continued registration.

ii. Payment, Clearing, and Settlement Supervision Act of 2010

Title VIII of the Dodd-Frank Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”), established an enhanced supervisory and risk control system for systemically important clearing agencies and other financial market utilities (“FMUs”). Among other things, the Clearing Supervision Act provided that the Commission may prescribe regulations containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for any designated clearing entities it regulates. On July 11, 2011, the FSOC published a final rule concerning its authority to designate FMUs as systemically important and on July 18, 2012, the FSOC designated as systemically important the following registered clearing agencies: Chicago Mercantile Exchange (“CME”), The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), ICE Clear Credit LLC, National Securities Clearing Corporation (“NSCC”), and The Options Clearing Corporation (“OCC”).

Congress recognized in the Clearing Supervision Act that the operation of multilateral payment, clearing or settlement activities may reduce risks for clearing participants and the broader financial system, while at the same time creating new risks that require multilateral

payment, clearing or settlement activities to be well-designed and operated in a safe and sound manner. The Clearing Supervision Act is designed, in part, to provide a regulatory framework to help address such risk management issues, which is generally consistent with the Exchange Act requirement that clearing agencies be organized in a manner so as to facilitate prompt and accurate clearance and settlement, safeguard securities and funds and protect investors.

iii. Section 17A of Exchange Act

In addition to the authority provided to the Commission under Titles VII and VIII of the Dodd-Frank Act, the Commission has authority over clearing agencies under the Exchange Act. For example, entities are required to register with the Commission pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 prior to performing the functions of a clearing agency. Under this registration system, the Commission is not permitted to grant registration unless it determines that the rules and operations of the clearing agency meet the standards set forth in Section 17A. Specifically, Sections 17A(b)(3)(A)-(I) identify determinations that the Commission must make about the rules and structure of a clearing agency prior to granting registration. If a clearing agency is granted registration, the Commission oversees the clearing agency to facilitate compliance with the Exchange Act through the rule filing process for self-regulatory organizations (“SROs”) and through on-site examinations by Commission staff. Section 17A also gives the Commission authority to adopt rules for clearing agencies as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act and prohibits a registered clearing agency from engaging in any activity in contravention of these rules and regulations.

iv. Exchange Act Rule 17Ad-22

In 2012, the Commission adopted Rule 17Ad-22 under the Exchange Act to strengthen the substantive regulation of registered clearing agencies and promote their safe and reliable operation.<sup>1</sup> In 2016, the Commission also took an important step in the development of its regulatory framework for registered clearing agencies by adding new Rule 17Ad-22(e),<sup>2</sup> which strengthened the existing framework by establishing requirements for registered clearing agencies that meet the definition of a “covered clearing agency.”

Under Exchange Act Rule 17Ad-22(a), the term “covered clearing agency” means a registered clearing agency that (i) has been designated as systemically important by FSOC and for which the Commission is the supervisory agency under the Clearing Supervision Act (“designated clearing agency”), or (ii) provides central counterparty services for security-based swaps or is involved in activities the Commission determines to have a more complex risk profile (“complex risk profile clearing agency”), unless the Commodity Futures Trading Commission (“CFTC”) is the supervisory agency under the Clearing Supervision Act.<sup>3</sup>

---

<sup>1</sup> See 17 CFR 240.17Ad-22; Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66219, 66225–26 (Nov. 2, 2012).

<sup>2</sup> Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70902–05 (Oct. 13, 2016) (“CCA Standards adopting release”).

<sup>3</sup> 17 CFR 240.17Ad-22(a)(4),(5).

Rule 17Ad-22(e) includes requirements for covered clearing agencies intended to address the activity and risks that their size, operation, and importance pose to the U.S. securities markets, the risks inherent in the products they clear, and the goals of both the Exchange Act and the Dodd-Frank Act. Of particular note, the requirements in Rule 17Ad-22(e) that address policies and procedures for transparency, governance, financial risk management, and operational risk management help ensure that covered clearing agencies are robust and stable.<sup>4</sup>

## **Exchange Act Rule 17Ab2-2**

When the Commission adopted the above-described amendments to Exchange Act Rule 17Ad-22 in 2016, it also adopted Rule 17Ab2-2 under the Exchange Act, which establishes procedures for the Commission to make a determination, either of its own initiative or upon application by any clearing agency or member of a clearing agency, whether a covered clearing agency is systemically important in multiple jurisdictions and procedures to determine, if the Commission deems appropriate, whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile. In addition, Rule 17Ab2-2 establishes procedures for the Commission to determine whether to rescind any such determination previously made by the Commission.

Exchange Act Rule 17Ab2-2 is a necessary tool to provide transparency in governing determinations regarding a clearing agency's status as systemically important in multiple jurisdictions or having a complex risk profile, and additionally, providing for a process to rescind any determinations made pursuant to the Rule. Exchange Act Rule 17Ab2-2 also provides the Commission with the flexibility necessary to achieve the goals of Section 17A of the Exchange Act, Title VII of the Dodd-Frank Act, and the Clearing Supervision Act, in light of the ever-changing nature of the U.S. securities markets, including the nature and character of the participants in the market and the products required to be cleared and settled.

There is a collection of information associated with Exchange Act Rule 17Ab2-2. The information collected is necessary to carry out the mandates of the Exchange Act, as amended by the Dodd-Frank Act.

The statutory basis for proposing Exchange Act Rule 17Ab2-2 is as follows: Exchange Act Section 17A, 15 U.S.C. 78q-1, and Section 805 of the Clearing Supervision Act, 12 U.S.C. 5464.

## **2. Information Collection Purpose and Use**

Exchange Act Rule 17Ab2-2 establishes a process for Commission determinations regarding whether a covered clearing agency is systemically important in multiple jurisdictions and whether a clearing agency providing central counterparty services has a more complex risk profile. In addition, Exchange Act Rule 17Ab2-2 establishes procedures for the Commission to determine whether to rescind any such determination previously made by the Commission. Because determinations made by the Commission pursuant to Exchange Act Rule 17Ab2-2 may

---

<sup>4</sup> CCA Standards adopting release, supra note 2, at 70793, 70801–10, 70837–38.

be made upon the request of a clearing agency, respondent clearing agencies have the burden of preparing such requests for submission to the Commission. The purpose of the information collection is to enable determinations by the Commission regarding the status of a covered clearing agency or clearing agency providing central counterparty services, as described above. Upon receipt of such a request, the Commission uses the information provided in the submission to make a determination under Exchange Act Rule 17Ab2-2 regarding either (i) whether a covered clearing agency as systemically important in multiple jurisdictions; (ii) whether a clearing agency that provides central counterparty services or clearing agency that is registered with the Commission for the purpose of clearing security-based swaps, has a more complex risk profile; or (iii) whether to rescind any such determination previously made by the Commission.

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

Exchange Act Rule 17Ab2-2 does not specify the manner in which a registered clearing agency, or a member of a registered clearing agency, is required to submit a request for determination as to the status of the registrant as a covered clearing agency. While the Commission will accept such a request for determination as a paper (hardcopy) document, the Commission believes that clearing agencies utilize various computer information systems to identify and compile the necessary information and will submit such information and request for a determination electronically.

### **4. Duplication**

Section 712(a)(2) of the Dodd-Frank Act provides that, before commencing any rulemaking regarding, among other things, clearing agencies with regard to security-based swaps, the Commission must consult and coordinate with CFTC and other prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible. The Commission staff and the CFTC staff have consulted and coordinated with one another regarding their respective Commission's rules regarding clearing agencies as mandated by the Dodd-Frank Act. The Commission staff has also consulted and coordinated with other prudential regulators. The Rule does not duplicate information required to be collected elsewhere.

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

Exchange Act Rule 17Ab2-2 does not affect any small entities.

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

The Dodd-Frank Act enacted sweeping reforms in the financial system, including reforms regarding FMUs such as clearing agencies. It also charged the Commission with significant duties in carrying out these reforms. The consequences of not conducting the collection of information pursuant to the Rule would significantly impair the Commission's ability to carry out its statutory obligations under the Exchange Act, as amended by Titles VII and VIII of the Dodd-Frank Act.

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

There are no special circumstances. This collection is consistent with the general information collection guidelines imposed for public protection as set forth in 5 CFR 1320.5(d) (2).

**8. Consultations Outside the Agency**

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

**9. Payment or Gift**

Not applicable.

**10. Confidentiality**

The Commission staff does not anticipate that it will receive confidential information in response to this collection of information. To the extent that the Commission receives confidential information pursuant to the collection of information associated with the Rule, the Commission expects such information would be kept confidential, subject to the provisions of applicable law.<sup>5</sup>

**11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information. The agency has determined that a system of records notice and privacy impact assessment are not required in connection with the collection of information.

**12. Burden of Information Collection**

Commission staff estimates that in the next three years two registered clearing agencies or their members on their behalf will apply for a Commission determination, or may be subject to a Commission-initiated determination, regarding whether a registered clearing agency is involved in activities with a more complex risk profile or whether a covered clearing agency is systemically important in multiple jurisdictions.

---

<sup>5</sup> See, e.g., 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. See 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. See 5 U.S.C. 552(b)(8).

Commission staff estimates that each respondent clearing agency incurs a one-time burden of approximately 10 hours to draft and review a determination request submitted to the Commission, for a total of 20 hours for all respondents.<sup>6</sup>

**In summary, the Commission staff estimates that the reporting burden per respondent is 10 hours, or 3.33 hours per year when annualized over three years.<sup>7</sup> The total reporting burden for all respondents is 20 hours, or 6.66 hours per year when annualized over three years.<sup>8</sup>**

### **13. Costs to Respondents**

Registered clearing agencies seeking a determination from the Commission regarding their status as systemically important in multiple jurisdictions may seek the assistance of outside counsel. Commission staff estimates this one-time cost for each respondent is \$2,000.<sup>9</sup>

**In summary, Commission staff estimates that should respondent clearing agencies hire outside counsel to seek a determination from the Commission in accordance with Rule 17Ab2-2, the labor cost per respondent will be approximately \$2,000 or \$666.67 when annualized over three years.<sup>10</sup> The total one-time cost associated with hiring outside counsel is \$4,000 or \$1,333.33 per year when annualized over three years.<sup>11</sup>**

### **14. Costs to Federal Government**

Not applicable.

### **15. Changes in Burden**

None.

---

<sup>6</sup> This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Staff Attorney for 3 hours) + (Outside Counsel for 5 hours)) = 10 hours x 2 respondent clearing agencies = 20 hours.

<sup>7</sup> 10 hours (estimated total burden over 3 years) ÷ 3 years = 3.33 hours.

<sup>8</sup> 2 respondents \* (10 hours (Year 1 burden) + 0 hours (Year 2 burden) + 0 hours (Year 3 burden)) = 20 hours (estimated total burden over 3 years) ÷ 3 years = 6.66 hours.

<sup>9</sup> This figure was calculated as follows: Outside Counsel for 5 hours at \$400 per hour = \$2,000.

<sup>10</sup> \$2,000 ÷ 3 years = \$666.67.

<sup>11</sup> \$2,000 x 2 registered clearing agencies = \$4,000 ÷ 3 years = \$1,333.33.

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

Not applicable.

**17. Approval to Omit OMB Approval 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**

Not applicable. The collection of information does not employ statistical methods.