

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Rule 15c2-1: Hypothecation of Customer Securities**  
**(OMB Control Number 3235-0485)**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

The Securities and Exchange Commission (“Commission”) adopted Rule 15c2-1<sup>1</sup> together with Rule 8c-1<sup>2</sup> in 1940 to implement section 8(c) of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>3</sup> Section 8(c) of the Exchange Act addresses the pledging of customer securities by a broker-dealer as collateral for a loan (the “hypothecation” of the securities) and prohibits broker-dealers from: commingling the securities of different customers as collateral for a loan without the written consent of each customer; commingling customer securities with securities owned by the broker-dealer as collateral for a loan; or pledging customer securities for more than the total amount that all customers owe the broker-dealer on the securities (the “aggregate indebtedness” of the customers with respect to the securities). Rule 15c2-1, like Rule 8c-1, was adopted to furnish added protection to customers against losses which may result from broker-dealer failures. To this end, the two rules, in effect, prohibit broker-dealers from risking the securities of their customers as collateral to finance their own trading, speculating or underwriting ventures.

As adopted, Rule 15c2-1 prohibits, with certain exemptions, the commingling under the same lien of securities of margin customers: (a) with other customers without their written consent, and (b) with the broker-dealer. The rule also prohibits the re-hypothecation of customers’ margin securities for a sum in excess of the customer’s aggregate indebtedness.<sup>4</sup>

The Commission is statutorily authorized by section 15(c)(2) of the Exchange Act to adopt rules and regulations that define and prescribe means reasonably designed to prevent such acts and practices as are fraudulent, deceptive, or manipulative. Further statutory authority is found in section 23(a) of the Exchange Act.

**2. Purpose and Use of the Information Collection**

The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and

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<sup>1</sup> 17 CFR 240.15c2-1.

<sup>2</sup> 17 CFR 240.8c-1.

<sup>3</sup> See Exchange Act Release No. 2690 (Nov. 15, 1940), 11 FR 10982 (Sept. 27, 1946). Rules 8c-1 and 15c2-1 were amended in 1971 to expand a limited exemption from the rules for the loans of clearing corporations of registered national securities associations. Exchange Act Release No. 9428 (Dec. 29, 1971), 37 FR 73 (Jan. 5, 1972).

<sup>4</sup> *Id.*

practices by broker-dealers. In addition, the information required by the rule provides important investor protections.

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

The compilation of this information must be done on an individual basis for each potential lender. Thus, improved information technology would not reduce the burden.

### **4. Duplication**

Although Rule 8c-1 requires similar information, no rule prohibits combining the notices and consents under both Rules 8c-1 and 15c2-1 in the same documents.

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

The rule is not unduly burdensome on small broker-dealers because small broker-dealers generally would not carry customer accounts.

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

The information is collected as each transaction warrants and, therefore, there is no way to require less frequent collection without undermining the purposes of the rule.

### **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).

### **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 comments were received.

### **9. Payment or Gift**

No payment or gift was provided to respondents.

### **10. Confidentiality**

No assurances of confidentiality are provided in the statute or the rule.

## 11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII). The agency has determined that a SORN and PIA are not required in connection with the collection of information.

## 12. Information Collection Burden

Only broker-dealers that carry customer accounts can pledge customer securities as collateral for bank loans. There are approximately 48 respondents as of September 30, 2020 (i.e., broker-dealers that conducted business with the public, filed Part II or Part IICSE of the FOCUS Report, did not claim an exemption from the Rule 15c3-3 reserve formula computation, and reported that they had a bank loan during at least one quarter of the current year).

Under Rule 15c2-1, a broker-dealer cannot commingle the securities of different customers as collateral for a loan without the written consent of each customer. Paragraph (f) of Rule 15c2-1 provides that when a broker-dealer hypothecates customer securities, it must give written notice to the lender that the securities are customer securities and that the hypothecation does not contravene any section of the rule. If the account is an omnibus account, the broker-dealer for whom the account is carried may furnish a statement to the person carrying the account that all the securities are customer securities and that the hypothecation does not contravene any section of the rule.

It is difficult to make a meaningful estimate of the reporting burden on respondents because of the variation in size of broker-dealers subject to the rule. For example, the amount of time required to comply with the rule will vary, depending on the amount of customer securities hypothecated by the broker-dealer. For each hypothecation, Commission staff estimates that it takes an average of approximately 10 minutes to create and send a notice of hypothecation to the pledgee in accordance with the rule and an average of approximately 20 minutes to request and process consents from customers to permit commingling of customer accounts under the same lien, for a total of 30 minutes. The staff also estimates that the respondent broker-dealers hypothecate customer securities an average of 45 times per year. The total annual compliance burden is therefore approximately 1,080 hours ( $48 \times 45 \times .5$ ).<sup>5</sup> This total annual hour burden relates to both third party disclosure (10 minutes, or .1667 hours, to create and send a notice) and recordkeeping (20 minutes, or .3333 hours, to request and process customers consents), resulting in approximately 360 hours ( $.3333 \times 1,080$ ) related to third party disclosure and approximately 720 hours ( $.6667 \times 1,080$ ) related to recordkeeping, of the 1,080 annual hours.

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<sup>5</sup>  $48 \times 45 = 2,160$  responses.

Summary of Hourly Burdens								
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
Hypothecation of Customer Securities Rule 15c2-1	48	0	3 <sup>rd</sup> -Party Disclosure	Ongoing	45	.1667	7.5	360
			Recordkeeping	Ongoing	45	.3333	15	720
TOTAL ANNUAL INDUSTRY BURDEN								1,080

### 13. Costs to Respondents

Respondents will not incur any capital, start up, operational, or maintenance costs to comply with the rule.

### 14. Costs to Federal Government

Respondent broker-dealers maintain the records required by this rule, so there is no cost to the federal government.

### 15. Changes in Burden

The changes in burden are due to a decrease in the estimated number of respondents. Only broker-dealers that conducted business with the public, filed Part II or Part IICSE of the FOCUS Report, did not claim an exemption from the Rule 15c3-3 reserve formula computation, and reported that they had a bank loan during at least one quarter of the current year are included within the estimated number of respondents. The estimated number of respondents decreased from 79 to 48 since the prior estimate. Therefore the annual burden estimate decreased from 1,777 to 1,080 hours since the prior estimate.

Information Collection	Annual Industry Hour Burden	Annual Industry Hour Burden Previously Approved	Change in Hour Burden	Reason for Change
Hypothecation of Securities: Rule 15c2-1	1,080	1,777	(697)	Reduction in Estimated Number of Respondents

**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.