

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Rule 17a-12/Form X-17A-5 Part II**  
**OMB Control No. 3235-0498**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Section 17(e) of the Exchange Act requires every registered broker-dealer to file annually with the Commission a balance sheet and income statement certified by an independent public accountant or by an accounting firm registered with the Public Company Accounting Oversight Board, if the firm is required to be registered under the Sarbanes-Oxley Act of 2002, and such other information concerning its financial condition as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Pursuant to this authority, in October 1998 the Commission enacted Rule 17a-12 ("Reports to be made by certain OTC derivatives dealers")<sup>1</sup> and amended Form X-17A-5 to add Part II<sup>2</sup> to establish the basic periodic reporting structure for OTC (over-the-counter) derivatives dealers. Rule 17a-12 requires OTC derivatives dealers registered with the Commission to file quarterly Financial and Operational Combined Uniform Single Reports ("FOCUS" reports) on Part II of Form X-17A-5 and annual audit reports with the Commission. The provisions of Rule 17a-12 are similar to those contained in Exchange Act Rule 17a-5 ("Reports to be made by certain brokers and dealers")<sup>3</sup> but take into consideration the more limited and unique business conducted by OTC derivatives dealers.

The quarterly filings must include certain information specified in the Framework for Voluntary Oversight of the Derivatives Policy Group ("DPG").<sup>4</sup> This credit and market risk information, which must be reported on Schedules I - V and VII of Part II of Form X-17A-5, enables the Commission to ascertain the nature and scope of a firm's OTC derivatives activity and to monitor the firm's risk exposure.

Rule 17a-12 also requires that OTC derivatives dealers file an annual audited report. Among other things, the audited report must include a statement of financial condition, a statement of income, a statement of cash flows, a statement of changes in owners' equity, a

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<sup>1</sup> 17 CFR 240.17a-12.

<sup>2</sup> 17 CFR 249.617.

<sup>3</sup> 17 CFR 240.17a-5.

<sup>4</sup> See Framework for Voluntary Oversight, Derivatives Policy Group (Mar. 1995).

statement of changes in subordinated liabilities, and supporting schedules, including a computation of net capital. The report must be audited by an independent public accountant. Concurrently with the annual audited report, OTC derivatives dealers must file supplemental reports by the auditor, including an accountant's report on material inadequacies and reportable conditions, an accountant's report on management controls, and an accountant's report on inventory pricing and modeling.

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

The information collected under Rule 17a-12 is essential to the regulation and oversight of OTC derivatives dealers and the primary means the Commission uses to monitor and enforce compliance with the Commission's financial responsibility rules as prescribed by the Exchange Act. These quarterly FOCUS and annual audited reports are used to evaluate the securities-related and other activities each OTC derivatives dealer is engaged in, the extent to which it is engaged in those activities, and how economic events and government policies might affect various segments of the securities industry. In addition, the Commission staff reviews FOCUS report information as part of its preparation for examinations and inspections. A firm's failure to comply with this rule would severely impair the Commission's ability to protect customers, industry counter-parties, and others.

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

Most OTC derivatives dealers and other firms engaged in swaps and related activities use automated systems to prepare information provided on Part II of Form X-17A-5. As so few OTC derivatives dealers have registered with the Commission, it is not economically feasible for the Commission to develop a system which would allow for electronic filing of this form.

## **4. Duplication**

OTC derivatives dealers are not otherwise required to obtain and maintain the information required by the rule.

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

The rule does not affect small entities.

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

If the collection were not made, or were made less frequently, the protection afforded to the public would be lessened.

## **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 public comments were received.

## **9. Payment or Gift to Respondents**

Not applicable. No payment or gift was provided to respondents.

## **10. Confidentiality**

Information provided by OTC derivatives dealers in FOCUS reports, supporting schedules, and annual audited reports is confidential pursuant to Rule 17a-12(a)(2) and (c)(3). The statutory basis for this confidential treatment is the exemption contained in Section (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, which provides that the requirement for public dissemination does not apply to commercial or financial information which is privileged or confidential.

## **11. Sensitive Questions**

No information of a sensitive nature will be required under this collection of information. The agency has determined that neither a PIA nor a SORN are required in connection with the collection information.

## **12. Burden of Information Collection**

There are currently five OTC derivatives dealers registered with the Commission. The staff anticipates that three of these OTC derivatives dealers will register with the Commission as Security-Based Swap Dealers in the next three years. As a consequence of these entities registering as Security-Based Swap Dealers, they will become subject to Rule 18a-7 under the Exchange Act, rather than Rule 17a-12 and only two OTC derivatives dealers will be subject to the requirements of Rule 17a-12. The staff estimates that the average amount of time necessary to prepare and file the information required by the rule is 80 hours per OTC derivatives dealer per year to prepare the OTCDD quarterly reports on Part II of Form X-17A-5 (based upon 4 quarterly responses per year and an average of 20 hours spent preparing each response) and 100 hours per OTC derivatives dealer per year to prepare the annual audited report and supporting schedules. Thus the total annual time burden for each OTC derivatives dealer is approximately 180 hours per year and the aggregate annual time burden for the two OTC derivatives dealers anticipated to not register as Security-Based Swap Dealers is approximately 360 hours per year ( $2 \times 180 = 360$ ). The estimates of the annual time burden are based upon discussions with industry participants.

Summary of Hourly Burdens								
Name of Information Collection	Total Number of Respondents	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Burden per Entity per Response	Annual Burden Per Entity (Hours)	Annual Industry Burden
Rule 17a-12/Form X-17A-5 Part II	2	0	Reporting	Ongoing	4	20	80	160
Rule 17a-12 – Annual audited Report and Supporting Schedules	2	0	Reporting	Ongoing	1	100	100	200
<b>TOTAL ANNUAL INDUSTRY BURDEN</b>								<b>360</b>

### 13. Costs to Respondents

The Commission estimates that the average annual reporting cost per OTC derivatives dealer for the independent public accountant to examine the financial statements is approximately \$46,300 per respondent. Based on this estimate, the total industry-wide annual cost is approximately \$92,600 (\$46,300 x 2).

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Type of Burden	Ongoing Burden Per Response Per Year Per Respondent	Total Reporting Burden For All Respondents
Rule 17a-12 – Annual audited Report and Supporting Schedules	Reporting	2	2	Ongoing	\$46,300	\$92,600
<b>TOTAL ANNUAL COST FOR ALL RESPONDENTS</b>						<b>\$92,600</b>

### 14. Costs to Federal Government

Rule 17a-12, is not expected to result in costs to the federal government due to contracting, information technology, development, hiring one or more new employees, or reallocating existing employees.

**15. Explanation of Changes in Burden**

The annual hour burden has decreased from approximately 1,080 hours to approximately 360 hours and the annual cost burden has decreased from approximately \$277,800 to approximately \$92,600 because the estimated number of respondents subject to the rule has decreased from 6 to 2.

**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. Collection of Information Employing Statistical Methods**

This collection does not involve statistical methods.