

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 15c3-5: Risk Management Controls for Brokers or Dealers
with Market Access
OMB Control No. 3235-0673

A. JUSTIFICATION

1. Information Collection Necessity

Rule 15c3-5 under the Securities Exchange Act of 1934 (“Exchange Act”) requires brokers or dealers with access to trading directly on an exchange or alternative trading system (“ATS”), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The rule requires brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to assure overall effectiveness of such controls and procedures. Each such broker or dealer is required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a-4(e)(7) under the Exchange Act.¹ Such regular review is required to be conducted in accordance with written procedures and is required to be documented. The broker or dealer is required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a-4(e)(7) under the Exchange Act, and Rule 17a-4(b) under the Exchange Act, respectively.²

In addition, the Chief Executive Officer (or equivalent officer) is required to certify annually that the broker or dealer’s risk management controls and supervisory procedures comply with the rule, and that the broker-dealer conducted such review. Such

¹ See 17 CFR 240.17a-4(e)(7). Pursuant to Rule 17a-4(e)(7), every broker or dealer subject to Rule 17a-3 is required to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the broker or dealer until three years after the termination of the use of the manual.

² See 17 CFR 240.17a-4(b). Pursuant to Rule 17a-4(b), every broker or dealer subject to Rule 17a-3 is required to preserve for a period of not less than three years, the first two years in an easily accessible place, certain records of the broker or dealer.

certifications are required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a-4(b) under the Exchange Act.

2. Information Collection Purpose and Use

The rule seeks to ensure that broker-dealers, which under the current regulatory structure are the only entities that may be members of exchanges or provide access to trading in securities on an ATS to non-broker-dealers, and, as a practical matter, constitute the majority of subscribers to ATSS, appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.

3. Consideration Given to Information Technology

Rule 15c3-5 requires a broker or dealer to apply the financial and regulatory controls on an automated, pre-trade basis before orders route to an exchange or ATS. The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens associated with Rule 15c3-5.

4. Duplication

No duplication is apparent.

5. Effect on Small Entities

A broker-dealer is a small business if its total capital (net worth plus subordinated liabilities) on the last day of its most recent fiscal year was \$500,000 or less, and is not affiliated with any entity that is not a “small business.”³ Currently, most small brokers or dealers, when accessing an exchange or ATS in the ordinary course of their business, should already have risk management controls and supervisory procedures in place. In many cases, the rule may be substantially satisfied by a small broker-dealer’s existing financial and regulatory risk management controls and current supervisory procedures. Further, staff discussions with various industry participants indicated that very few, if any, small broker-dealers with market access provide other persons with “unfiltered” access.⁴ Therefore, these brokers or dealers will likely only require limited updates to their systems to meet the requisite risk management controls and other requirements in the rule. The rule may impact small brokers or dealers that utilize risk management technology provided by a vendor or some other third party; however, the requirement to

³ 17 CFR 240.0-10(c).

⁴ “Unfiltered” access is generally understood to be a subset of sponsored access where pre-trade filters or controls are not applied to orders before such orders are submitted to an exchange or ATS. The rule effectively prohibits any access to trading on an exchange or ATS, whether sponsored or otherwise, where pre-trade controls are not applied.

directly monitor the operation of the financial and regulatory risk management controls should not impose a significant cost or burden because the Commission understands that such technology allows the broker or dealer to exclusively manage such controls.⁵

6. Consequences of Not Conducting Collection

The broker-dealer, as the member of the exchange or subscriber of the ATS, is responsible for all trading that occurs under its market participant identifier (“MPID”) or other market identifier.⁶ If this information were not collected frequently, the Commission believes that the broker-dealer would jeopardize not only its own financial viability, but also the stability of the markets and, potentially, the financial system. The Commission believes that this responsibility is too great to allow the requisite risk management controls to be monitored less frequently.

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

Not applicable.

10. Confidentiality

The information collection under Rule 15c3-5 is not confidential.

11. Sensitive Questions

No information of a sensitive information will be required under this collection of information. The information collection only requires the name, occupation, and job title of the individual completing the form. The agency has determined that neither a PIA nor a SORN are required in connection with the collection of information.

⁵ The Commission’s understanding is based on discussions with various industry participants.

⁶ See, e.g., NYSE IM-89-6 (January 25, 1989); and Securities Exchange Act Release No. 40354 (August 24, 1998), 63 FR 46264 (August 31, 1998) (NASD NTM- 98-66).

12. Information Collection Burden

The “collection of information” contained in Rule 15c3-5 applies to approximately 520 brokers and dealers that have market access or provide a customer or any other person with market access. Of these 520 brokers and dealers, the Commission estimates that there are 320 brokers or dealers that are members of an exchange. This estimate is based on broker-dealer responses to FOCUS report filings with the Commission. The Commission estimates that the remaining 200 broker-dealers are not exchange members but are broker-dealer operators of ATSS that provide access to trading in securities to non-broker-dealers or are subscribers to ATSS. This estimate is based on a sampling of subscriber information contained in Exhibit A to Form ATS-R filed with the Commission.

a. Technology

To comply with Rule 15c3-5, a respondent must maintain its risk management system by monitoring its effectiveness and updating its systems to address any issues detected. In addition, a respondent is required to preserve a copy of its written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a-4(e)(7) under the Exchange Act. The Commission estimates that the ongoing annualized burden for a potential respondent to maintain its risk management system will be approximately 115 burden hours.⁷ The Commission estimates the related internal compliance cost for this hour burden per respondent at approximately \$35,282 per year.⁸ The Commission believes the ongoing burden of

⁷ Based on discussions with industry participants, the Commission estimates that a dedicated team of 1.5 people would be used for the ongoing maintenance of all technology systems. The team may include one or more programmer analysts, senior programmers, or senior systems analysts. In-house system staff size varies depending on, among other things, the business model of the broker or dealer. Each staff member would work 160 hours per month, or $12 \text{ months} \times 160 \text{ hours} = 1,920 \text{ hours}$ per year. A team of 1.5 people therefore would work $1,920 \text{ hours} \times 1.5 \text{ people} = 2,880 \text{ hours}$ per year. Based on discussions with industry participants, the Commission estimates that 4% of the team’s total work time would be used for ongoing risk management maintenance. Accordingly, the total number of burden hours for this task, per year, is $0.04 \times 2,880 \text{ hours} = 115.2 \text{ hours}$ (approximately 115 hours).

⁸ The Commission estimates that the programmer analyst would work 40% of the total hours required for ongoing maintenance, or $115 \text{ hours} \times 0.40 = 46 \text{ hours}$; the senior programmer would work 20% of the total hours, or $115 \text{ hours} \times 0.20 = 23 \text{ hours}$; and the senior systems analyst would work 40% of the total hours, or $115 \text{ hours} \times 0.40 = 46 \text{ hours}$. The total ongoing maintenance cost for staff is estimated to be $46 \text{ hours} \times \267 (hourly wage for a programmer analyst) + $23 \text{ hours} \times \368 (hourly wage for a senior programmer) + $46 \text{ hours} \times \316 (hourly wage for a senior systems analyst) = \$35,282.

complying with the rule's collection of information will include, among other things, updating systems to address any issues detected, updating risk management controls to reflect any change in its business model, and documenting and preserving a broker-dealer's written description of its risk management controls.⁹

b. Legal and Compliance

Based on discussions with various industry participants and the Commission's prior experience with broker-dealers, the Commission estimates that a broker-dealer's legal and compliance burden of complying with Rule 15c3-5 will require approximately 45 hours per year. Specifically, compliance attorneys who review, document, and update written compliance policies and procedures are expected to require an estimated 20 hours per year; a compliance manager who reviews, documents, and updates written compliance policies and procedures is expected to require 20 hours per year; and the Chief Executive Officer, who certifies the policies and procedures, is expected to require another 5 hours per year. The Commission estimates the related internal compliance cost for this hour burden per respondent at approximately \$29,020 per year.¹⁰

The \$267, \$369, and \$316 per hour estimates for a programmer analyst, senior programmer, and senior systems analyst, respectively is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁹ For the purposes of calculating the PRA burden, it is assumed that all broker-dealers under the rule will perform their technology development and maintenance in-house. However, a portion of these broker-dealers may decide to forego internal technology development and instead opt to outsource it to a third-party technology provider or service bureau. Alternatively, a portion of the broker-dealers may choose to forego both in-house and outsourced technology development, and instead purchase a technology solution directly from a third-party technology provider or service bureau.

¹⁰ The total ongoing legal and compliance cost is estimated to be 20 hours × \$406 (hourly wage for a compliance attorney) + 20 hours × \$344 (hourly wage for a compliance manager) + 5 hours × \$280 (hourly wage for the Chief Executive Officer) = \$29,020.

The \$406 and \$344 per hour estimates for a compliance attorney and compliance manager, respectively, is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The \$2,780 per hour figure for a broker-dealer Chief Executive Officer comes from the median CEO compensation of US exchange-traded broker-dealers that did not report investment banking revenues for 2014, provided by SNL (now S&P Global Market Intelligence) and adjusted for inflation and divided by 1800 hours per work-year. This data are available at: <https://www.snl.com/InteractiveX/Article.aspx?cdid=A-33301532-13622>.

c. Total Burden

The ongoing annual aggregate information collection burden per broker-dealer would be 160 hours (115 hours (for technology) + 45 hours (for legal and compliance) = 160 hours). Under the rule, the total annualized burden for all respondents would be approximately 83,200 hours (160 hours per broker-dealer × 520 brokers and dealers = 91,200 hours). The Commission estimates the related total internal compliance cost for this hour burden at approximately \$33,437,040 per year (((\$35,282 for technology + \$29,020 for legal and compliance) × 520 brokers and dealers = \$33,437,040).

Rule	Burden Type	Number of Respondents	Number of Annual Responses Per Respondent	Time Per Response (Hours)	Total Burden to Respondents Per Burden Type Hours)
Rule 15c3-5 (Market Access Rule)	Periodic Reporting	520	1	160	83,200

13. Costs to Respondents

For hardware and software expenses, the Commission estimates that the average ongoing external cost would be approximately \$20,500 per broker-dealer.¹¹ For hardware and software expenses, the total annualized external cost for all respondents would be \$10,660,000 (\$20,500 per broker-dealer × 520 brokers and dealers = \$10,660,000). The estimates of the annual burdens are based on discussions with potential respondents.

Rule	Cost Type	Number of Respondents	Annual Cost Per Respondent	Total Cost to Respondents
Rule 15c3-5 (Market Access Rule)	Hardware and software expenses	520	\$20,500	\$10,660,000

¹¹ Industry sources estimate that for ongoing maintenance, hardware would cost \$8,900 on average and software would cost \$11,600 on average. The total average hardware and software cost for ongoing maintenance would be \$8,900 + \$ 11,600 = \$20,500.

14. Costs to Federal Government

There will be no additional costs to the Federal Government.

15. Changes in Burden

The estimates of burden under Rule 15c3-5 have decreased since the prior submission. The total estimated hourly burden of compliance with the rule has been reduced from 91,200 hours to 83,200 hours, and the estimated dollar cost expenses have been reduced from \$11,685,000 to \$10,660,000, in each case because the Commission has reduced its estimate of the number of broker-dealers with market access from 570 to 520, based on a reduction of the estimated number of broker-dealers with market access as a member of an exchange.

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.