

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 15b1-1 and Form BD
SEC File No. 270-19, OMB Control No. 3235-0012
Proposed Partial Revision

A. JUSTIFICATION

1. Necessity of Information Collection

The Securities Exchange Act of 1934 (“Exchange Act”) regulates the nation’s securities markets and the securities professionals who participate in those markets.

Under the Exchange Act, broker-dealers must register with the Securities and Exchange Commission (“Commission”). Section 15(a)(1) of the Exchange Act provides that it is unlawful for broker-dealers to solicit or effect transactions in most securities unless they are registered as broker-dealers with the Commission pursuant to Section 15(b) of the Exchange Act. Section 15B(a)(1) of the Exchange Act also provides that it is unlawful for municipal securities dealers, other than registered broker-dealers, to solicit or effect transactions in municipal securities unless they are registered with the Commission as municipal securities dealers pursuant to Section 15B(a)(2) of the Exchange Act. In addition, Section 15C(a)(1) of the Exchange Act provides that it is unlawful for government securities broker-dealers, other than registered broker-dealers and certain financial institutions, to solicit or effect transactions in government securities unless they are registered as government securities broker-dealers with the Commission pursuant to Section 15C(a)(2) of the Exchange Act.

Sections 15(b)(1) and (2) of the Exchange Act authorize the Commission to prescribe by rule an application form for registration that contains such information about broker-dealers that is necessary or appropriate in the public interest or for the protection of investors. Section 17(a)(1) of the Exchange Act authorizes the Commission to require registered broker-dealers and registered municipal securities dealers to make and file such reports as the Commission determines as necessary or appropriate in the public interest or for the protection of investors.

To implement these provisions, the Commission adopted Rule 15b1-1 (17 CFR 240.15b11) and Form BD (17 CFR 249.501). Form BD is the uniform application for broker-dealer registration. Form BD requires the applicant or registrant filing the form to provide the Commission with certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD is designed to permit the Commission to determine whether the applicant meets the statutory requirements to engage in the securities business.

In 1981, the Central Registration Depository (“CRD”) was created as a cooperative effort between the National Association of Securities Dealers¹ and the North American Securities Administration Association (“NASAA”), in order to facilitate a “one stop” filing process for broker-dealers and their associated persons (i.e., only one form had to be filed with the CRD to satisfy FINRA and participating state registration requirements). The CRD is operated and maintained by FINRA and is used by the Commission (since 1992),² self-regulatory organizations (or “SROs”),³ and state securities regulators in connection with registering and licensing broker-dealers and their associated persons.

2022 Proposed Rulemaking Affecting this OMB Control Number

In January 2022, the Commission proposed amendments to Regulation ATS⁴ and Exchange Act Rule 3b-16, which defines certain terms in the definition of “exchange” under section 3(a)(1) of the Exchange Act.⁵ In April 2023, the Commission provided supplemental information and reopened the comment period for the 2022 Reg ATS Proposing Release.⁶ These proposed amendments would increase the number of respondents for the collections of information in several rules, including this one. This revision only increases the number of respondents, as described below, and does not otherwise revise the collections of information in this OMB Control Number.

The Commission assumed in both the 2022 Reg ATS Proposing and 2023 Reg ATS

¹ The National Association of Securities Dealers merged with New York Stock Exchange Member Regulation to form the Financial Industry Regulatory Authority (or “FINRA”) on July 30, 2007. For the sake of clarity, as used herein the term “FINRA” will be used to identify both FINRA and its predecessor, the National Association of Securities Dealers.

² Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11.

³ The SROs include FINRA and various other entities.

⁴ “Regulation ATS” consists of 17 CFR 242.300 through 242.304 (Rules 300 through 304 under the Exchange Act).

⁵ See Securities Exchange Act Release No. 94062 (Jan. 26, 2022), 87 FR 15496 (Mar. 18, 2022) (“2022 Reg ATS Proposing Release”). The Commission proposed to, among other things: (1) amend Rule 3b-16 under the Exchange Act to, among other things, include within the definition of “exchange” systems that offer the use of non-firm trading interest and provide non-discretionary protocols to bring together buyers and sellers of securities; (2) eliminate the exemption from compliance with Regulation ATS for ATSs that trade government securities as defined under Section 3(a)(42) of the Exchange Act (“government securities”) or repurchase and reverse repurchase agreements on government securities (“Government Securities ATSs”).

⁶ See Securities Exchange Act Release No. 97309 (Apr. 14, 2023), 88 FR 29448 (May 5, 2023) (“2023 Reg ATS Reopening Release”). The Commission reopened the comment period for the 2022 Reg ATS Proposing Release and provided supplemental information and economic analysis regarding trading systems that trade crypto asset securities that would be newly included in the definition of “exchange” under the proposal.

Reopening Releases that, under the proposed amendments, systems that would be newly captured under the proposed definition of “exchange” will choose to register as broker-dealers and comply with the conditions of Regulation ATS rather than register as a national securities exchange, because of the lighter regulatory requirements imposed on ATSs, as compared to registered exchanges.⁷ Accordingly, this revision to the PRA analysis for Rule 15b-1 and Form BD increases the estimated number of respondents, in light of the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, to include both (1) Government Securities ATSs that are not currently registered as broker-dealers and (2) systems that would be newly captured under the proposed definition of “exchange” and choose to register as broker-dealers and comply with the conditions of Regulation ATS rather than register as national securities exchanges.

2. Purpose and Use of Information Collection

The Commission uses the information disclosed by applicants in Form BD: (1) to determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers, and government securities broker-dealers, and where the Commission, other regulators, and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers, and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

3. Consideration Given to Information Technology

Broker-dealer applicants currently file Form BD electronically with FINRA. FINRA then provides the Commission with access to the CRD system and provides certain reports to the Commission, as requested. This method of collecting information reduces the regulatory burden upon broker-dealers by permitting them to file applications for registration and amendments thereto once and electronically, rather than requiring the broker-dealer to file multiple applications for registration and amendments separately with the Commission, SROs, and state regulators.

4. Duplication

As noted above, broker-dealer applicants use Form BD to register with the Commission, the states, and certain SROs. By filing Form BD in one central location, the Commission

⁷ See 2022 Reg ATS Proposing Release, *supra* note 5, at 15618 n.1056 and accompanying text.

provides “one stop” filing for applicants, so that they are not required to file multiple copies of Form BD.

The requirements to disclose information in Form BD do not duplicate any other federal statute or rule.

5. Effect on Small Entities

On December 31, 2021, 3,553 broker-dealers were registered with the Commission.⁸ As of December 31, 2021, there were 1,405 small broker-dealers.⁹

All broker-dealers, regardless of size, are required to disclose the information requested in Form BD. Therefore, Form BD affects small broker-dealers registered or registering with the Commission. The Commission believes, however, that the disclosure requirements of Form BD are not unduly burdensome, particularly in relation to the important objectives served by the disclosure of registration information.

6. Consequences of Not Conducting Collection

Broker-dealer applicants generally are required to file Form BD only once to register and are required to file amendments to Form BD only when information originally reported in Form BD changes or becomes inaccurate. Therefore, less frequent collection for Form BD information would impair the accuracy of the information available to the Commission and decrease the protections afforded to investors.

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 Based on Form BD data.

⁹ Based on data provided to the Commission through Forms X-17A-5. 17 CFR 240.0-10 defines “small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act.[1]” In particular, section (c) defines a small broker-dealer as a “broker dealer that: (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 § 240.17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business 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 as defined in this section[. . .]”.

8. Consultations Outside the Agency

In the 2022 Reg ATS Proposing Release, the Commission solicited comment on the accuracy of the burden of the proposed revisions to the seven collections of information contained in the proposal.¹⁰ The Commission did not receive comments specifically relating to the collection of information for this OMB Control Number, but it did receive general comments questioning whether the Commission had underestimated the number of newly-designated ATSS, particularly particularly systems that trade crypto asset securities and systems commenters characterize as decentralized finance or (“DeFi”),¹¹ which would, in turn, affect the number of estimated respondents for this collection of information. In the 2023 Reg ATS Reopening Release, the Commission increased the estimated number of respondents for this collection of information specifically to account for the types of systems raised by commenters, as detailed below. The Commission has also solicited comment on the revised PRA analysis in the 2023 Reg ATS Reopening Release,¹² but has not yet received specific comments on that topic. The Commission will consider all comments received before adoption of a final rule.

9. Payment or Gift

Not applicable.

10. Confidentiality

The information provided on Form BD is not confidential and is available to the public.

11. Sensitive Questions

The information collection collects personally identifiable information (PII) that may include name, personal address and telephone number, criminal history, and financial information, as well as job title and work address. The PII collected may also include the broker-dealer’s social security number or tax identification number. The agency has determined that, in general, the information collection does not constitute a system of record for purposes of the

10 See 2022 Reg ATS Proposing Release, *supra* note 5, at 15593.

11 See Letter from Gregory Babyak and Gary Stone, Regulatory Affairs, Bloomberg L.P., dated Sept. 21, 2022, at 2; Letter from Robert Toomey, Managing Director, Associate General Counsel, SIFMA, dated Jun. 13 2022, at 5-6; Letter from Gus Coldebella and Gregory Xethalis, dated Apr. 19, 2022, at 4-5; Letter from Sheila Warren, Chief Executive Officer, Crypto Council for Innovation, dated Apr. 18, 2022, at 4; Letter from Kristin Smith, Executive Director, and Jake Chervinsk, Head of Policy, Blockchain Association, dated Apr. 18, 2022, at 7-8; Letter from Renata K. Szkoda, Chair, Global Digital Asset & Cryptocurrency Association, dated Apr. 18, 2022, at 6; Letter from LeXpunK, dated Apr. 18, 2022, at 11; Letter from Miller Whitehouse-Levine, Policy Director, DeFi Education Fund, dated Apr. 18, 2022, at 16-17; Letter from Paul Grewal, Chief Legal Officer, Coinbase, dated Apr. 18, 2022, at 6; Letter from Teana Baker-Taylor, Chief Policy Officer, Chamber of Digital Commerce, et al., dated Mar. 24, 2022, at 5; all available at <https://www.sec.gov/comments/s7-02-22/s70222.htm>.

12 See 2023 Reg ATS Proposing Release, *supra* note 6, at 29469.

Privacy Act, because the information is not retrieved by a personal identifier. However, there is a scenario in which a potential sole proprietor registered as a broker-dealer may use his or her name as the designated company name. To the extent that the collection in this instance constitutes a Privacy Act record, SORN SEC-03 “Division of Trading and Markets Records” covers the information collection. Also, the EDGAR PIA will cover the information collection. A Privacy Act statement is included on Form BD.

12. Information Collection Burden

2022 Proposed Rulemaking Affecting this OMB Control Number

As discussed above, the changes proposed in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases would increase the number of respondents for the collections of information in several rules, including this one. This revision only increases the number of respondents, as described below, and does not otherwise revise the collections of information in this OMB Control Number.

Based on the number of initial applications on Form BD the Commission received from 10/01/2019 through 09/30/2021, and considering the number of initial applications estimated by the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, Commission staff estimates that the Commission will receive approximately 185 applications each year on Form BD.¹³ While it is likely that the time necessary to complete Form BD will vary depending on the nature and complexity of the entity’s business, Commission staff has previously estimated that the average time necessary for a broker-dealer to complete and file an application for broker-dealer registration on Form BD would be approximately 2.75 hours, and that estimate has been subject to notice and comment.¹⁴ Consequently, Commission staff estimates that total annual burden hours required for all firms to complete and file applications for broker-dealer registration on Form BD is approximately 509 hours ($2.75 \times 185 = 508.75$ rounded up to 509).

Once registered, a broker-dealer must file an amended Form BD when information it originally reported on Form BD changes or becomes inaccurate. Commission staff has previously estimated that the average time necessary to complete an amended Form BD would be approximately 20 minutes (0.33333333 hours), and that estimate has been subject to notice and

¹³ The Commission generally classifies Form BD data based on the Federal government's fiscal year, from October 1 through September 30. The Commission received 186, 161, and 179 broker-dealer applications on Form BD during the fiscal years ending 2019, 2020, and 2021, respectively. The number of new respondents estimated by the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases is 28 total. See 2022 Reg ATS Proposing Release, *supra* note 5, at 15592; 2023 Reg ATS Reopening Release, *supra* note 6, at 29468. $(186 + 161 + 179 + 28) / 3 \text{ years} = 184.67$, rounded up to 185. It should be noted that the addition of the estimated number of applications from the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases to actual Form BD data is done solely for the purposes of this revision. Future renewals of this OMB Control Number will continue to follow the methodology of averaging the number of actual new Form BD applications from the most recent three fiscal years to derive an annual estimate of new applications.

¹⁴ Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586.

comment.¹⁵ Based on the number of amended Forms BD the Commission received from 10/01/2019 through 09/30/2021, Commission staff estimates that the total number of amendments that the Commission will receive on Form BD would be approximately 9,667,¹⁶ or approximately 2.72 per broker-dealer each year.¹⁷ Therefore, Commission staff estimates that the total annual burden hours necessary for broker-dealers to complete and file amended Forms BD is approximately 3,222 hours (9,667 amended Forms BD per year \times 0.33333333 hours per amendment = 3,222.3333 rounded down to 3,222).

Thus, the Commission estimates that the total industry-wide annual filing burden for applications and amendments filed with the Commission on Form BD is approximately 3,720 hours (498 + 3,222).

Form type	Burden type	Annual number of responses received	Hours per response	Total burden per burden type (hours)
Form BD	Initial reporting	185	2.75	509
Form BD/A	Periodic reporting	9,667	0.33333333	3,222
<i>Total Burden</i>				3,731

The staff believes that a broker-dealer would have a Compliance Manager complete and file both applications and amendments on Form BD, at \$344/hour.¹⁸ Consequently, the staff estimates that the total internal cost of compliance associated with these burden hours for all broker-dealers is approximately \$1,283,464 each year ($\$344 \times 3,731$).

13. Costs to Respondents

It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information.

¹⁵ Id.

¹⁶ See supra, footnote 6. The Commission received 10,668, 8,708, and 9,625 amended Forms BD's during the fiscal years ending 2019, 2020, and 2021, respectively. $9,667 = (10,668 + 8,708 + 9,625) / 3$ years.

¹⁷ $2.72 = 9,667 / 3,553$.

¹⁸ \$344 per hour figure for a Compliance Manager is from the Securities Industry and Financial Markets Association's publication titled Management & Professional Earnings in the Securities Industry 2013, as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

14. Costs to Federal Government

Not applicable. Review and processing of broker-dealer applications and amendments filed on Form BD is done by existing Commission staff as part of their regular duties.

15. Changes in Burden

The increase of 28 hours in the annual time burden (from approximately 3,703 hours to approximately 3,731 hours) is due to an increase in the number of broker-dealers the staff expects to file on Form BD as a result of the proposed amendments described in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases.

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

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates. The OMB control number will be displayed.

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.