

88 FR 47526-02, 2023 WL 4683764(F.R.)

NOTICES

SECURITIES AND EXCHANGE COMMISSION  
[SEC File No. 270-XXX, OMB Control No. 3235-XXXX]

Proposed Collection; Comment Request: Rule 15c6-2

Monday, July 24, 2023

**\*47526** Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information provided for in Rule 15c6-2 (17 CFR. 240.15c6-2) under the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. 78a et seq.). The Commission will submit the collection of information to the Office of Management and Budget (“OMB”) for approval. The title of the information collection is “Rule 15c6-2.” An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Rule 15c6-2 was adopted as part of the final rules to shorten the standard settlement cycle for securities transactions from two business days after the transaction date to one business day following the transaction date. The compliance date for adopted Rule 15c6-2 is May 28, 2024. Certain provisions of Rule 15c6-2 contain “collection of information” requirements within the meaning of the PRA.[FN1] The requirements for this collection of information is mandatory for any broker or dealer (“broker-dealer”) engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of § 240.15c6-1(a) to either enter into written agreements as specified in the rule or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date.[FN2]

Specifically, for a broker-dealer that determines to establish, maintain, and enforce written policies and procedures pursuant to Rule 15c6-2(a), Rule 15c6-2(b) requires that such policies and procedures must be reasonably designed to (1) identify and describe any technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction; (2) set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction; (3) describe the procedures that the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date; (4) describe how the broker-dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker-dealer experiences delays in promptly completing the confirmation; and (5) measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

The purpose of the collection under Rule 15c6-2 is to ensure that parties to institutional transactions—that is, transactions where a broker-dealer or its customer must engage with agents of the customer, including the customer’s investment adviser or its securities custodian, to prepare a transaction for settlement—can ensure the completion of the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of the day on trade date.

\*47527 The respondents to the collection of information are broker-dealers that are parties to institutional trades. As of December 31, 2021, 3,508 broker-dealers were registered with the Commission.[FN3] Of those, approximately 143 broker-dealers are participants of the Depository Trust Company (“DTC”),[FN4] a clearing agency registered with the Commission that provides central securities depository services for transactions in U.S. equity securities. Participants in DTC can facilitate the settlement of securities transactions on behalf of their customers. For example, broker-dealers that participate in DTC are often referred to as “clearing brokers” within the securities industry. In addition to broker-dealers, DTC participants include bank custodians that may also hold securities on behalf of institutional customers. Among other things, DTC facilitates the settlement of securities transactions using the delivery-versus-payment (“DVP”) and receipt-versus-payment (“RVP”) methods, both of which are commonly used by buyers and sellers to settle an institutional transaction once the parties have completed the allocation, confirmation, and affirmation process. Because DTC is the only clearing agency that provides central securities depository services for U.S. equities, the Commission believes that the set of participants at DTC that are broker-dealers are a useful, if partial, estimate of broker-dealers that participate in the allocation, confirmation, and affirmation process and therefore of broker-dealers that would be subject to the requirements of Rule 15c6-2.

In addition, other broker-dealers may participate in the allocation, confirmation, and affirmation process but, because they do not maintain status as a participant in DTC, rely on commercial relationships with DTC participants (i.e., clearing brokers) to facilitate final settlement of their institutional transactions. Using annual statistics compiled by the Financial Industry Regulatory Authority (“FINRA”), the Commission estimates that approximately 268 additional broker-dealers may serve institutional customers.[FN5] Accordingly, the Commission estimates that approximately 411 broker-dealers would be subject to the requirements of Rule 15c6-2.

Rule 15c6-2 will impose both initial and ongoing burdens. The extent to which a respondent will incur a burden to comply with the collection of information under Rule 15c6-2 will depend on the extent to which the broker-dealer determines that its policies and procedures, as opposed to its written agreements, will be used to comply with the rule and how any existing policies and procedures for ensuring timely settlement would need to be modified to address same-day affirmation. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions, and the securities industry considers achieving “same-day affirmation” an industry best practice. Nonetheless, the Commission believes that respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then update their policies and procedures to address any gaps identified. Accordingly, the Commission estimates that respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours [FN6] to create policies and procedures required under the rule, and that the internal cost (or monetized value of the hour burden) of this one-time burden per broker-dealer would be \$88,880.[FN7]

Rule 15c6-2 also imposes ongoing burdens on a respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6-2 would impose an aggregate annual burden on a respondent broker-dealer of 480 hours,[FN8] and an internal cost (or monetized value of the hour burden) per broker-dealer of \$172,416.[FN9] The total industry internal cost is estimated to be approximately \$107M.[FN10]

Rule 15c6-2 imposes a recordkeeping requirement on broker-dealers to maintain policies and procedures consistent with the rule. Where the Commission requests that a broker-dealer produce records retained pursuant to the requirements of Rule 15c6-2, a broker-dealer can request confidential treatment of the information. If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.

Pursuant to Exchange Act Rule 17a-4(b)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must preserve for a period of not less than three years, the first two years in an easily accessible place, all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.[FN11]

Pursuant to 17 CFR 240.17a-4(e)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must 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 member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.[FN12]

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the \*47528 information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by September 22, 2023.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: PRA\_Mailbox@sec.gov.

Dated: July 18, 2023.

Sherry R. Haywood,

Assistant Secretary.

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#### Footnotes

- 1 See 44 U.S.C. 3501 et seq.
- 2 See 17 CFR 240.15c6-2; Exchange Act Release No. 96930 (Feb. 15, 2023) 88 FR 13872 (Mar. 6, 2023) (“Rule 15c6-2 Adopting Release”); see also Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) (“Rule 15c6-2 Proposing Release”).
- 3 This estimate is derived from FOCUS Report data as of December 31, 2021.
- 4 See DTCC, DTC Member Directories, <https://www.dtcc.com/client-center/dtc-directories> (last updated July 1, 2023).
- 5 Specifically, statistics compiled by FINRA suggest that approximately 256 small firms and 12 medium-sized firms in the “Trading and Execution” category perform “Institutional Brokerage.” FINRA, 2022 FINRA Industry Snapshot 33, 34 (2022), <https://www.finra.org/sites/default/files/2022-03/2022-industry-snapshot.pdf>.
- 6 This figure was calculated as follows: (Assistant General Counsel for 20 hours + Compliance Attorney for 120 hours + Senior Risk Management Specialist for 20 hours + Risk Management Specialist for 80 hours) = 240 hours x 411 respondents = 98,640 hours.
- 7 This figure was calculated as follows: (Assistant General Counsel at \$543/hour x 20 hours = \$10,860) + (Compliance Attorney at \$426/hour x 120 hours = \$51,120) + (Senior Risk Management Specialist at \$417/hour x 20 hours = \$8,340) + (Risk Management Specialist at \$232/hour x 80 hours = \$18,560) = \$88,880 x 411 respondents = \$36,529,680.

- 8 This figure was calculated as follows: (Assistant General Counsel for 48 hours + Compliance Attorney for 192 hours + Senior Risk Management Specialist for 48 hours + Risk Management Specialist for 192 hours) = 480 hours x 411 respondents = 197,280 hours.
- 9 This figure was calculated as follows: (Assistant General Counsel at \$543/hour x 48 hours = \$26,064) + (Compliance Attorney at \$426/hour x 192 hours = \$81,792) + (Senior Risk Management Specialist at \$417/hour x 48 hours = \$20,016) + (Risk Management Specialist at \$232/hour x 192 hours = \$44,544) = \$172,416 x 411 respondents = \$70,862,976.
- 10 This figure was calculated as follows: \$36,529,680 (industry one-time burden) + \$70,862,976 (industry ongoing burden) = \$107,392,656.
- 11 [17 CFR 240.17a-4\(b\)\(7\)](#). The title of the information collection for [17 CFR 240.17a-4](#) is “Records to be Preserved by Broker-Dealers” (OMB Control No. 3235-0279).
- 12 [17 CFR 240.17a-4\(e\)\(7\)](#).

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