

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 10b-17- Untimely Announcements of Record Dates
OMB Control No. 3235-0476

A. JUSTIFICATION

1. Necessity of Information Collection

In 1971, the Securities and Exchange Commission (“Commission”) adopted Rule 10b-17 (17 CFR 240.10b-17) which, in pertinent part, states that it shall constitute a “manipulative or deceptive device or contrivance as used in section 10(b)” of the Securities Exchange Act of 1934 (the “Exchange Act”) for any issuer of a class of publicly traded securities (“issuers”) to fail to provide specified advance notice, pursuant to paragraph (b) of the rule, concerning impending actions, including, dividends or other distributions in cash or in kind; planned splits or reverse splits; and rights or other subscription offerings (“distributions”) to the National Association of Securities Dealers, Inc. (n/k/a the Financial Industry Regulatory Authority, Inc., or FINRA), or an exchange on which the securities are registered and which has substantially comparable procedures to those set forth in the rule.¹ The requirements of Rule 10b-17 do not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered with the Commission under the Investment Company Act of 1940.

The Commission has found that failures of a publicly held company to provide a timely announcement of the record date of these types of distributions has had a misleading and deceptive effect on both the broker-dealer community and the investing public. As a direct result of such failures, purchasers and their brokers may have entered into and settled securities transactions without knowledge of the accrual of rights to these distributions and were thus unable to take necessary steps to protect their interests.² The Commission has also found that sellers who have received the distributions as record holders on the specified record date, after having disposed of their securities, have also disposed of the cash or stock dividends or other rights received as such record holders without knowledge of possible claims of purchasers of the underlying security to those rights.³ In addition, the Commission has found that some issuers have made belated announcements of stock splits or dividends apparently aware that such actions would have a manipulative effect on the market for their securities. In these cases, “buy-in” transactions effected by purchasers to liquidate the sellers’ obligations have had the effect of raising the price of the security. The Commission noted that this effect has been particularly significant when the existing floating supply of the security is limited.⁴

¹ See *Timely Advance Notice of Record Dates for Publicly Traded Securities*, Exchange Act Release No. 34-9192 (Jun. 7, 1971), 36 FR 11513 (Jun. 15, 1971).

² See *id.*

³ See *id.*

⁴ See *id.*

2. Purpose and Use of Information Collection

The Commission believes that the information required to be provided by issuers pursuant to Rule 10b-17 is necessary to help prevent fraudulent, manipulative, and deceptive acts and practices as used in section 10(b) of the Exchange Act. The Commission has found that failures to provide timely announcement of the record date for the types of distributions covered by Rule 10b-17 has led to a number of abuses detailed above. Timely notice of the record date for these types of distributions provides investors with information necessary to make an informed investment decision.

3. Consideration Given to Information Technology

Continued improvements in telecommunication and data processing technology since the rule's adoption in 1971 have reduced any regulatory burdens placed on issuers as a result of Rule 10b-17. The Commission is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

4. Duplication

The information required to be provided by issuers pursuant to Rule 10b-17 described herein does not duplicate that required by any other federal regulation.

5. Effect on Small Entities

The information required to be provided by issuers pursuant to Rule 10b-17 applies equally to all issuers subject to the rule's requirements. The Commission believes that the requirements of Rules 10b-17 are not unduly burdensome on small entities.

6. Consequences of Not Conducting Collection

As discussed above, the Commission has found that failures of a publicly held company to provide a timely announcement of the record date of these types of distributions has had a misleading and deceptive effect on both the broker-dealer community and the investing public. Timely notice of the record date of these distributions provides broker-dealers and investors with information necessary to make informed investment decisions. In addition, the Commission believes that the information required to be provided by issuers pursuant to Rule 10b-17 is necessary to help prevent fraudulent, manipulative, and deceptive acts and practices as used in section 10(b) of the Exchange Act.

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. Rule 10b-17 does not involve any payments or gifts to respondents.

10. Confidentiality

No assurance of confidentiality is provided.

11. Sensitive Questions

The Information Collection does not collect information about individuals, but rather only business contact information; therefore, a PIA, SORN, and PAS are not required.

12. Information Collection Burden

In part, Rule 10b-17 requires issuers of publicly traded securities to give notice of the following actions: (1) a dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering. The Commission estimates that approximately 6,866 issuers made approximately 29,152 dividend announcements covered by Rule 10b-17 in 2022. The Commission also estimates that approximately 699 issuers made 774 split and/or reverse split announcements in 2022.⁵ In addition, the Commission estimates that approximately 23 issuers made 26 rights and other offering announcements in 2022. In total, the Commission estimates that there were 7,588 respondents⁶ with 29,952 responses⁷ in 2022. The Commission estimates that each response, which constitutes an ongoing third-party disclosure burden, takes 10 minutes to complete and estimate that the total annual burden for all respondents is 4,992 hours.⁸ We estimate that the average hourly internal compliance cost to produce and file an announcement required under the rule is \$86.39.⁹ The total annual internal cost for complying with this rule is thus estimated to be \$431,258.88.¹⁰

⁵ The Commission estimates that 122 issuers made 144 stock split announcements in 2022. The Commission estimates that 577 issuers made 630 reverse stock split announcements in 2022.

⁶ $6,866 + 699 + 23 = 7,588$ respondents.

⁷ $29,152 + 774 + 26 = 29,952$ responses.

⁸ $(29,952 \text{ responses} \times 10 \text{ minutes}) / 60 \text{ minutes} = 4,992$ hours.

⁹ In 2020, the Commission estimated that the average hourly cost to produce a Rule 10b-17 notice was \$73.59. Adjusted for inflation, the Commission estimates that the average hourly cost to produce a Rule 10b-17 notice in 2023 is \$86.39.

¹⁰ $4,992 \text{ hours} \times \$86.39 = \$431,258.88$.

Type of information Collection	Burden Type	Number of Respondents	Number of Annual Reponses	Time Per Response (minutes)	Total Burden Per Burden Type (Hours)
Dividend announcements	Third-party disclosure	6,866	29,152	10	4,858.67
Stock split or reverse split announcements	Third-party disclosure	699	774	10	129
Rights or other subscription announcements	Third-party disclosure	23	26	10	4.33
<i>Total aggregate burden hours</i>					<i>4,992</i>

13. Costs to Respondents

It is not anticipated that respondents will incur any capital or start-up costs, or any additional operational or maintenance costs (other than provided for in Item 12) to comply with the collection of information.¹¹

14. Costs to Federal Government

The government does not experience any costs based on the third-party reporting required pursuant to Rule 10b-17.

15. Changes in Burden

The change in the estimated annual hour burden is due to an increase in the estimated number of responses. The Commission estimates that there were 28,407 responses in 2019 and 29,952 responses in 2022. Due to this increase, the Commission estimates that the total aggregate burden hours will increase from 4,735 hours per year to 4,992 hours per year.

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.

¹¹ Rule 10b-17 does not require issuers to provide notice to the Commission. Instead, issuers must provide notice to FINRA, or the exchange on which the security is registered, which may require issuers to complete a separate form and pay an applicable fee.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collecting Information Employing Statistical Methods

This collection does not involve statistical methods.