

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17Ad-26

Request for New OMB Control Number

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

A. JUSTIFICATION

1. Necessity of Information Collection

Current Regulatory Framework for Clearing Agencies

i. Exchange Act

Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) directs the Securities and Exchange Commission (“Commission”) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and provides the Commission with the authority to regulate those entities critical to the clearance and settlement process.¹ Section 17A of the Exchange Act also directs the Commission to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.² Clearing agencies are broadly defined in the Exchange Act and undertake a variety of functions.³ Under Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder, an entity that meets the definition of a clearing agency is required to register with the Commission or obtain from the Commission an exemption from registration prior to performing the functions of a clearing agency.⁴ To grant registration to a clearing agency, the Exchange Act requires the Commission to determine that the rules and operations of the applicant clearing agency meet the standards set forth in Section 17A of the Exchange Act.⁵

¹ See 15 U.S.C. 78q-1(a)(2).

² See 15 U.S.C. 78q-1(a)(2)(A).

³ See 15 U.S.C. 78c(a)(23)(A) (providing the definition of “clearing agency”); see also Exchange Act Release No. 71699 (Mar. 12, 2014), 79 FR 16865 (Mar. 26, 2014), corrected at 79 FR 29507, 29510–11 (May 22, 2014) (“2014 Proposing Release”); Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66219, 66221–22 (Nov. 2, 2012) (“2012 Adopting Release”).

⁴ See 15 U.S.C. 78q-1; 17 CFR 240.17Ab2-1.

⁵ See 15 U.S.C. 78q-1(b)(3)(A)–(I) (identifying nine determinations that the Commission must make regarding the rules and structure of a clearing agency to grant registration). In 1980, the Commission published a statement of the views and positions of Commission staff regarding the requirements of Section 17A. See Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

Following this registration process, the Commission supervises registered clearing agencies using various tools. One of these tools is Section 17(a) of the Exchange Act, which directs registered clearing agencies to make and keep for prescribed periods such records, furnish such copies, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the Exchange Act.⁶ In addition, Section 17A of the Exchange Act provides the Commission with authority to adopt rules as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act and prohibits a clearing agency from engaging in any activity in contravention of such rules and regulations.⁷ Section 23(a) of the Exchange Act further authorizes the Commission to make rules and regulations as necessary or appropriate to implement the provisions of the Exchange Act.⁸

ii. Dodd-Frank Act

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) added provisions to the Exchange Act that (i) require entities performing the functions of a clearing agency with respect to security-based swaps (“security-based swap clearing agencies”) to register with the Commission, and (ii) direct the Commission to adopt rules with respect to security-based swap clearing agencies.⁹ Although Title VII directs the Commission to focus specifically on conflicts of interest with respect to security-based swap clearing agencies, the Commission believes that conflicts of interest concerns can arise across all registered clearing agencies regardless of the asset classes served.

In addition, the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”), enacted in Title VIII of the Dodd-Frank Act, provides for the enhanced regulation of certain financial market utilities (“FMUs”).¹⁰ FMUs include clearing agencies that manage or operate a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the FMU.¹¹ The Financial Stability Oversight Council (“FSOC”) has designated certain FMUs as systemically important or likely to become systemically important (“SIFMUs”).¹² The Commission is the supervisory agency for four SIFMUs: DTC, FICC,

⁶ See 15 U.S.C. 78q(a)

⁷ See 15 U.S.C. 78q-1(d).

⁸ See 15 U.S.C. 78w(a).

⁹ See 15 U.S.C. 78q-1(i), (j); Dodd-Frank Act, Sec. 763(b), 124 Stat. at 1768–69 (adding paragraphs (i) and (j) to Section 17A of the Exchange Act).

¹⁰ The objectives and principles for the risk management standards prescribed under the Clearing Supervision Act shall be to (i) promote robust risk management; (ii) promote safety and soundness; (iii) reduce systemic risks; and (iv) support the stability of the broader financial system. See 12 U.S.C. 5464(b).

¹¹ See 12 U.S.C. 5462(6).

¹² See 12 U.S.C. 5463. An FMU is systemically important if the failure of or a disruption to the functioning of such FMU could create or increase the risk of significant liquidity or credit problems spreading among financial

NSCC, and OCC. The Commission jointly regulates ICC and OCC with the Commodity Futures Trading Commission (“CFTC”). The Commission also jointly regulates ICE Clear Europe and LCH SA, which have not been designated as systemically important by FSOC, with various other regulators, including the CFTC and the Bank of England.

In 2012, the Commission adopted Rule 17Ad-22 under the Exchange Act to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of covered clearing agencies, and improve efficiency, transparency, and access to covered clearing agencies.¹³ At that time, the Commission noted that the implementation of Rule 17Ad-22 would be an important first step in developing the regulatory changes contemplated by Titles VII and VIII of the Dodd-Frank Act.¹⁴ In 2016, the Commission adopted Rule 17Ad-22(e), building on the existing framework by establishing enhanced requirements for registered clearing agencies that meet the definition of a “covered clearing agency.”¹⁵ In 2020, the Commission adopted amendments to the definition of “covered clearing agency” and certain other definitions under Rule 17Ad-22 so that the definitions encompass all registered clearing agencies performing the functions of a central counterparty (“CCP”) or central securities depository (“CSD”).¹⁶

iii. Proposed Rule 17Ad-26

The proposed Rule 17Ad-26 would build upon existing Rule 17Ad-22(e)(3)(ii) that requires the policies and procedures of a covered clearing agency to include recovery and orderly wind-down plans (“RWP”). At the time Rule 17Ad-22(e)(3)(ii) became effective,¹⁷ the Commission declined to include requirements for the content of an RWP, stating that, given the nature of recovery and resolution planning, such plans are likely to closely reflect the specific characteristics of the covered clearing agency, including its ownership, organizational, and operational structures, as well as the size, systemic importance, global reach, and the risks

institutions or markets and thereby threaten the stability of the U.S. financial system. See 12 U.S.C. 5462(9). The following registered clearing agencies have been designated as systemically important by the FSOC: CME Group (“CME”), The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), ICE Clear Credit (“ICC”), National Securities Clearing Corporation (“NSCC”), and The Options Clearing Corporation (“OCC”).

¹³ See 17 CFR 240.17Ad-22; see also 2012 Adopting Release, supra note 3, at 66225–26.

¹⁴ See 2012 Adopting Release, supra note 3, at 66225–26.

¹⁵ See Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786 (Oct. 13, 2016) (“2016 Adopting Release”).

¹⁶ See Definition of Covered Clearing Agency, Exchange Act Release No. 88616 (April 9, 2020), 85 FR 28853 (May 14, 2020) (“2020 Adopting Release”).

¹⁷ Rule 17Ad-22(e) became effective on December 12, 2016, and covered clearing agencies were required to be in compliance with the amendments by April 11, 2017. See 2016 Adopting Release, 81 FR at 70848. The Commission granted a temporary exemption to covered clearing agencies from compliance with Rule 17Ad-22(e)(3)(ii) until December 31, 2017. See Exchange Act Release No. 80378 (Apr. 5, 2017), 82 FR 17300 (Apr. 10, 2017).

inherent in the products it clears.¹⁸ The Commission continues to believe that an RWP should closely reflect the specific characteristics of the covered clearing agency. However, at this time, based on its supervisory experience considering the RWPs of the covered clearing agencies, the Commission believes that there are certain elements that must be included in each covered clearing agency's plan, to ensure that the plan is fit for purpose and provides sufficient identification of how a covered clearing agency would operate in a recovery and how it would achieve an orderly wind-down. Accordingly, the Commission proposed new Rule 17Ad-26, which identifies certain elements that a covered clearing agency would be required to include in an RWP and would also include definitions of recovery and orderly wind-down, which would identify the objective that these plans are designed to meet.¹⁹

Specifically, proposed Rule 17Ad-26 would require that a covered clearing agency's recovery and wind-down plan, the existence of which is required in current Rule 17Ad-22(e)(3)(ii), shall: (1) identify and describe the covered clearing agency's critical payment, clearing, and settlement services and address how the covered clearing agency would continue to provide such critical services in the event of recovery and during an orderly wind-down, including the identification of the staffing necessary to support such critical services and analysis of how such staffing would continue in the event of a recovery and during an orderly wind-down; (2) identify and describe any service providers upon which the covered clearing agency relies to provide its critical payment, clearing, and settlement services identified in paragraph (1), specify to what critical services such service providers are relevant, and address how the covered clearing agency would ensure that service providers would continue to provide such critical services in the event of a recovery and during an orderly wind-down, including consideration of contractual obligations with such service providers and whether those obligations are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan; (3) identify and describe scenarios that may potentially prevent the covered clearing agency from being able to provide its critical payment, clearing, and settlement services as a going concern, including scenarios arising from uncovered credit losses, uncovered liquidity shortfalls, or general business losses; (4) identify and describe criteria that could trigger the implementation of the recovery and orderly wind-down plan and the process that the covered clearing agency uses to monitor and determine whether the criteria have been met, including the governance arrangements applicable to such process; (5) identify and describe the rules, policies, procedures, and any other tools the covered clearing agency would use in a recovery or orderly wind-down; (6) address how the rules, policies, procedures, and any other tools or resources identified in paragraph (5) would ensure timely implementation of the recovery and orderly wind-down plans; (7) include procedures for informing the Commission as soon as practicable when the covered clearing agency is considering initiating a recovery or orderly wind-down; (8) include procedures for testing the covered clearing agency's ability to implement the recovery and wind-down plans at least every twelve months, including by requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing of its plans, providing for reporting the results of the testing to the covered clearing agency's board of directors and senior

¹⁸ See 2016 Adopting Release, 81 FR at 70808-09.

¹⁹ See Covered Clearing Agency Resilience and Recovery and Wind-Down Plans, Exchange Act Release No. 97516 (May 17, 2023), 88 FR 34708 (May 30, 2023) ("Rule 17Ad-26 Proposing Release").

management, and specifying the procedures for, as appropriate, amending the plans to address the results of the testing; and (9) include procedures for review of the plans by the board of directors at least every twelve months or following material changes to the system or environment in which the covered clearing agency operates that would significantly affect the viability or execution of the plans, with such review informed, as appropriate by the covered clearing agency's testing of the plans as required in the prior section of the proposed rule.

The current RWPs of covered clearing agencies contain or address many of the elements being proposed for inclusion, but the current plans do not contain all the elements that would be required under the proposed rule. Therefore, the Commission believes that codifying these nine elements will help ensure that RWPs continue to be effective at planning for and managing a range of recovery and orderly wind-down scenarios that could risk transmitting systemic risk through the U.S. securities markets and the broader financial system, by accomplishing three objectives. First, the rule would bolster existing plans by requiring certain new elements be included. Second, for the elements that are already contained in existing RWPs, the rule would codify these elements and ensure that the plans are required to continue to include these elements in their RWPs, and any future changes to the RWPs would be subject to Commission review for consistency with these requirements. Finally, the rule would ensure that the RWPs of any new covered clearing agencies would contain all of these elements.

There are collections of information contained in proposed Rule 17Ad-26. The information collected in these provisions is necessary to carry out the mandates of the Exchange Act, as amended by the Dodd-Frank Act.

The statutory basis for proposed Rule 17Ad-26 is as follows: Exchange Act Section 17A, 15 U.S.C. 78q-1; Exchange Act Section 23(a), 15 U.S.C. 78w(a); and Section 805 of the Clearing Supervision Act, 12 U.S.C. 5464.

2. Purpose and Use of Information Collection

Proposed Rule 17Ad-26 would require that a covered clearing agency's RWP include nine elements. Based on the Commission's review and understanding of the covered clearing agencies' existing RWPs, respondent covered clearing agencies generally have written rules, policies, and procedures similar to the requirements that would be imposed under proposed Rule 17Ad-26. The burden imposed by would therefore be minimal and would likely be limited to the review of current policies and procedures and updating existing policies and procedures where appropriate to ensure compliance with the proposed rule.

The purpose of the collection of information under proposed Rule 17Ad-26 is to ensure that covered clearing agencies include a set of particular items in their RWPs (covered clearing agencies are currently required to have RWPs under Rule 17Ad-22(e)(3)(ii)).

3. Consideration Given to Information Technology

As a general matter, the collections of information contemplated by proposed Rule 17Ad-26 depend on the use of technologies and systems that a covered clearing agency already maintains to conduct its business, including its risk management and recordkeeping functions. Improvements to these technologies and systems may, over time, reduce the burdens

contemplated under proposed Rule 17Ad-26. The Commission is not aware of any technical or legal obstacles to reducing the burdens through the use of improved information technology.

4. Duplication

The collections of information contained in proposed Rule 17Ad-26 do not duplicate information required to be collected by other Commission rules or regulations.

5. Effect on Small Entities

Proposed Rule 17Ad-26 would apply to all registered clearing agencies. For the purposes of Commission rulemaking and as applicable to proposed Rule 17Ad-26, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than \$500 million in securities transactions during the preceding fiscal year, (ii) had less than \$200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.²⁰

Based on the Commission's existing information about the clearing agencies currently registered with the Commission, the Commission believes that all such registered clearing agencies exceed the thresholds defining "small entities" set out above. While other clearing agencies may emerge and seek to register as clearing agencies with the Commission, the Commission does not believe that any such entities would be "small entities" as defined in Exchange Act Rule 0-10.

6. Consequences of Not Conducting Collection

The Dodd-Frank Act enacted sweeping reforms in the financial system, including with respect to FMUs such as clearing agencies. It also charged the Commission with significant duties to carry out these reforms. The consequences of not conducting collections of information or any less frequent collections of information pursuant to proposed Rule 17Ad-26 would significantly impair the Commission's ability to carry out its statutory obligations under the Exchange Act, as amended by the Dodd-Frank 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 Commission issued the Rule 17Ad-26 Proposing Release to solicit comment on the new collection of information requirements and associated paperwork burdens for proposed Rule

²⁰ See 17 CFR 240.0-10(d).

17Ad-26.²¹ Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants and staff from other financial regulators, including the Commodity Futures Trading Commission (“CFTC”) and the Federal Reserve Board (“FRB”), through public conferences, meetings, and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing a final rule and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment or Gift

No payment or gift will be provided to any respondents.

10. Confidentiality

The collections of information in proposed Rule 17Ad-26 impose recordkeeping burdens on all registered clearing agencies. The recordkeeping burdens under these collections of information need not be submitted to the Commission. However, the Commission may request that a respondent clearing agency provide records pursuant to these collections of information, such as during an investigation or examination. When the Commission requests that records be provided, a respondent clearing agency can request confidential treatment for the records pursuant to Section 24(b) of the Exchange Act and Rule 24b-2 thereunder.²²

11. Sensitive Questions

The information collection does not collect information about individuals and, therefore, does not require a PIA, SORN, or PAS.

12. Information Collection Burden

Proposed Rule 17Ad-26 would create burdens and costs for covered clearing agencies. Below is a summary of the burden estimates for the proposed rule.

i. Number of Respondents

The requirements in proposed Rule 17Ad-26 would apply to all covered clearing agencies. Currently, there are seven clearing agencies registered with the Commission. The Commission anticipates that one additional entity may seek to register as a covered clearing agency in the next three years. Therefore, the Commission estimates that proposed Rule 17Ad-26 would have eight respondents.

²¹ See Rule 17Ad-26 Proposing Release, *supra* note 19.

²² See 17 CFR 240.24b-2.

ii. Source of Estimates, Annual Hour Burden, and Explanation of Estimates

Based on the Commission's review and understanding of the covered clearing agencies' existing RWPs, respondent covered clearing agencies generally have written rules, policies, and procedures similar to the requirements that would be imposed under proposed Rule 17Ad-26. The burden imposed by the proposed rule would therefore be minimal and would likely be limited to the review of current policies and procedures and updating existing policies and procedures where appropriate to ensure compliance with the proposed rule. Accordingly, the Commission preliminarily believes that a respondent covered clearing agency would incur a one-time burden of approximately 120 hours to review and update procedures,²³ or 40 hours when annualized over three years.²⁴

In addition, proposed Rule 17Ad-26 would also impose ongoing burdens on a respondent covered clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. The Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad-26 would impose an annual burden on a respondent covered clearing agency of 40 hours.²⁵

Therefore, the total aggregate annual industry-wide hourly burden imposed by Rule 17Ad-26 for the eight is approximately 640 hours per year.²⁶

The Commission preliminarily estimates that the respondent covered clearing agencies would incur an aggregate internal one-time cost of approximately \$377,520 to review current policies and procedures and updating existing policies and procedures where appropriate.²⁷ The Commission preliminarily estimates that the ongoing monitoring and compliance activities with respect to the proposed Rule 17Ad-26 would impose an aggregate ongoing cost on respondent covered clearing agencies of approximately \$147,760 per year.²⁸

²³ This figure was calculated as follows: Assistant General Counsel for 20 hours + Compliance Attorney for 50 hours + Business Risk Analyst for 35 hours + Senior Risk Management Specialist for 15 hours = 120 hours.

²⁴ This figure was calculated as follows: 120 hours/3 years = 40 hours/year.

²⁵ This figure was calculated as follows: Assistant General Counsel for 10 hours + Compliance Attorney for 30 hours = 40 hours.

²⁶ This figure was calculated as follows: 40 hours of annualized initial burden + 40 hours of annual ongoing burden = 80 hours of annual burden per respondent x 8 respondents = 640 hours/year industry-wide burden.

²⁷ This figure was calculated as follows: (Assistant General Counsel for 20 hours at \$551 per hour) + (Compliance Attorney for 50 hours at \$432 per hour) + (Business Risk Analyst for 35 hours at \$ 235 per hour) + (Senior Risk Management Specialist for 15 hours at \$423 per hour) = \$ 47,190 x 8 = \$377,520. See also 2023 Proposing Release, supra note 19, 88 FR at 34735.

²⁸ This figure was calculated as follows: (Assistant General Counsel for 10 hours at \$551 per hour) + (Compliance Attorney for 30 hours at \$432 per hour) = \$18,470 x 8 = \$147,760. See also 2023 Proposing Release, supra note 19, 88 FR at 34735.

iii. Table Summary of Hourly Burdens

The table below summarizes the Commission’s estimates of the total hourly burdens for all respondents under proposed Rule 17Ad-26. The table includes more than one row for the information collection. The top row is intended to reflect the burden estimates for the respondents that are currently registered with the Commission as covered clearing agencies, and the next row is intended to reflect the estimates for the respondent that is not currently registered as a covered clearing agency. A third row provides the subtotals from the two rows above.

IC	Name of Information Collection	Type of Burden	Number of Entities Impacted	Number of Annual Responses Per Entity	Initial Burden Per Entity Per Response	Annualized Initial Burden Per Entity Per Response	Ongoing Burden Per Entity Per Response	Total Annual Burden Per Entity	Total Annual Industry Burden
1	17Ad-26	Recordkeeping	7	1	120	40	40	80	560
2			1	1	120	40	40	80	80
		Subtotal	8						640

13. Costs to Respondents

Not applicable. Respondents will not incur any capital or start-up costs or any ongoing operation and maintenance costs.

14. Costs to Federal Government

Not applicable. No cost to the federal government is anticipated.

15. Changes in Burden

Not applicable. proposed Rule 17Ad-26 would create new burdens for covered clearing agencies. This submission provides the Commission’s initial estimates for the new burdens.

Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

16. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date.

17. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable. This collection complies with the requirements in 5 CFR 1320.9.

The PRA section of the proposing release included the

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.