

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17a-12/Form X-17A-5 Part II
OMB Control No. 3235-0498

A. JUSTIFICATION

1. Necessity of Information Collection

Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Section 17(e) of the Exchange Act requires every registered broker-dealer to file annually with the Commission a balance sheet and income statement certified by an independent public accountant or by an accounting firm registered with the Public Company Accounting Oversight Board, if the firm is required to be registered under the Sarbanes-Oxley Act of 2002, and such other information concerning its financial condition as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Pursuant to this authority, in October 1998 the Commission enacted Rule 17a-12¹ and amended Form X-17A-5 to add Part II² to establish the basic periodic reporting structure for OTC (over-the-counter) derivatives dealers. Rule 17a-12 requires OTC derivatives dealers registered with the Commission to file quarterly Financial and Operational Combined Uniform Single Reports ("FOCUS" reports) on Part II of Form X-17A-5 and annual audited reports with the Commission. The provisions of Rule 17a-12 are similar to those contained in Exchange Act Rule 17a-5³ – reports to be made by certain brokers and dealers – but take into consideration the more limited and unique business conducted by OTC derivatives dealers.

Rule 17a-12 also requires that OTC derivatives dealers file an annual audited report. Among other things, the audited report must include a statement of financial condition, a statement of income, a statement of cash flows, a statement of changes in owners' equity, a statement of changes in subordinated liabilities, and supporting schedules, including a computation of net capital. The report must be audited by an independent public accountant. Concurrently with the annual audited report, OTC derivatives dealers must file supplemental reports by the auditor, including an accountant's report on material inadequacies and reportable conditions, an accountant's report on management controls, and an accountant's report on inventory pricing and modeling.

2. Purpose and Use of the Information Collection

¹ 17 CFR 240.17a-12.

² 17 CFR 249.617.

³ 17 CFR 240.17a-5.

The information collected under Rule 17a-12 is essential to the regulation and oversight of OTC derivatives dealers and the primary means the Commission uses to monitor and enforce compliance with the Commission's financial responsibility rules as prescribed by the Exchange Act. These quarterly FOCUS and annual audited reports are used to evaluate the securities-related and other activities each OTC derivatives dealer is engaged in, the extent to which it is engaged in those activities, and how economic events and government policies might affect various segments of the securities industry. In addition, the Commission staff reviews FOCUS report information as part of its preparation for examinations and inspections. A firm's failure to comply with this rule would severely impair the Commission's ability to protect customers, industry counterparties, and others.

3. Consideration Given to Information Technology

Most OTC derivatives dealers and other firms engaged in swaps and related activities use automated systems to prepare information provided on quarterly FOCUS reports and annual audited reports. All OTC derivatives dealers currently file annual audited reports and supplemental reports electronically on the Commission's EDGAR system.

4. Duplication

OTC derivatives dealers are not otherwise required to obtain and maintain the information required by the rule.

5. Effect on Small Entities

The rule does not affect small entities.

6. Consequences of Not Conducting Collection

If the collection were not made, or were made less frequently, the protection afforded to the public would be lessened.

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 to Respondents

Not applicable. No payment or gift was provided to respondents.

10. Confidentiality

Information provided by OTC derivatives dealers in FOCUS reports, supporting schedules, and annual audited reports is confidential pursuant to Rule 17a-12(a)(2) and (c)(3). The statutory basis for this confidential treatment is the exemption contained in Section (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, which provides that the requirement for public dissemination does not apply to commercial or financial information which is privileged or confidential.

11. Sensitive Questions

The information collection collects basic elements of PII including name, job title, and work address that is covered by the EDGAR PIA. No information of a sensitive nature, including social security numbers, will be required under this collection of information. Additionally, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier.

12. Burden of Information Collection

As of December 31, 2023, there are seven OTC derivatives dealers registered with the Commission, and four of these OTC derivatives dealers also are registered with the Commission as Security-Based Swap Dealers (“SBSDs”). As a consequence of these entities registering as SBSBs, they are subject to Rule 18a-7 under the Exchange Act, rather than Rule 17a-12, and only three OTC derivatives dealers are subject to the requirements of Rule 17a-12. The staff estimates that the average amount of time necessary to prepare and file the information required by the rule is 80 hours per OTC derivatives dealer per year to prepare the quarterly FOCUS reports on Part II of Form X-17A-5 (based upon 4 quarterly responses per year and an average of 20 hours spent preparing each response) and 100 hours per OTC derivatives dealer per year to prepare the annual audited report and supporting schedules. Thus, the total annual time burden for each OTC derivatives dealer is approximately 180 hours per year and the aggregate annual time burden for the three OTC derivatives dealers not registered as SBSBs is approximately 540 hours per year (3 x 180 = 540).

Summary of Hourly Burdens								
Name of Information Collection	Total Number of Respondents	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Burden per Entity per Response	Annual Burden Per Entity (Hours)	Annual Industry Burden
Rule 17a-12/Form X-17A-5 Part II	3	0	Reporting	Ongoing	4	20	80	240
Rule 17a-12 – Annual Audited Report and Supporting	3	0	Reporting	Ongoing	1	100	100	300

Schedules								
TOTAL ANNUAL INDUSTRY BURDEN								540

13. Costs to Respondents

The Commission estimates that the average annual reporting cost per OTC derivatives dealer for the independent public accountant to examine the financial statements is approximately \$46,300 per respondent. Based on this estimate, the total industry-wide annual cost is approximately \$138,900 ($\$46,300 \times 3 = \$138,900$).

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Ongoing or Initial Burden	Ongoing Burden Per Response Per Respondent	Annual Burden Per Entity (Cost)	Total Reporting Burden for All Respondents
Rule 17a-12 – Annual Audited Report and Supporting Schedules	Reporting	3	1	Ongoing	\$46,300	\$46,300	\$138,900
TOTAL ANNUAL COST FOR ALL RESPONDENTS							\$138,900

14. Costs to Federal Government

Rule 17a-12 is not expected to result in costs to the federal government due to contracting, information technology, development, hiring one or more new employees, or reallocating existing employees.

15. Explanation of Changes in Burden

The annual hour burden increased from approximately 360 hours to approximately 540 hours per year and the annual cost burden increased from approximately \$92,600 to approximately \$138,900 per year because the estimated number of respondents subject to the rule increased from 2 to 3.

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. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.