

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

OMB Control No. 3235-0811
Final Rule

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

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.

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, 6}

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.⁷ 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.⁸ 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.⁹

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.¹⁰ 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”).¹¹ FMUs include clearing agencies that

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).

⁶ Currently, there are six active registered clearing agencies: 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”). Two registered clearing agencies are inactive: Boston Stock Exchange Clearing Corporation and Stock Clearing Corporation of Philadelphia.

⁷ See 15 U.S.C. 78q(a)

⁸ See 15 U.S.C. 78q-1(d).

⁹ See 15 U.S.C. 78w(a).

¹⁰ 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).

¹¹ The objectives and principles for the risk management standards prescribed under the Clearing Supervision

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.¹² The Financial Stability Oversight Council (“FSOC”) has designated certain FMUs as systemically important or likely to become systemically important (“SIFMUs”).¹³ The Commission is the supervisory agency for four SIFMUs: DTC, FICC, NSCC, and OCC. The Commission jointly regulates ICC and OCC with the Commodity Futures Trading Commission (“CFTC”). The Commission also jointly regulates LCH SA, which has not been designated as systemically important by FSOC, with various other regulators, including the CFTC.

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.¹⁴ 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.¹⁵ 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.”¹⁶ 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”).¹⁷ In 2024, the Commission adopted amendments to Rules 17Ad-22(e)(6) and (18) to require that every direct participant of a covered clearing agency for U.S. Treasury securities submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty and that the covered clearing agency for U.S. Treasury securities meet additional requirements for risk management.¹⁸

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).

¹² See 12 U.S.C. 5462(6).

¹³ 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 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: DTC, FICC, ICC, NSCC, and OCC.

¹⁴ See 17 CFR 240.17Ad-22; see also 2012 Adopting Release, supra note 3, at 66225–26.

¹⁵ See 2012 Adopting Release, supra note 3, at 66225–26.

¹⁶ See Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786 (Oct. 13, 2016) (“2016 Adopting Release”).

¹⁷ See Definition of Covered Clearing Agency, Exchange Act Release No. 88616 (April 9, 2020), 85 FR 28853 (May 14, 2020) (“2020 Adopting Release”).

¹⁸ See Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-

iii. Rule 17Ad-26

New Rule 17Ad-26 requires the recovery and orderly wind-down plans (“RWP”) of a covered clearing agency to include nine specific elements.¹⁹ Covered clearing agencies are required to have a RWP under existing Rule 17Ad-22(e)(3)(ii).

Although the requirement for a covered clearing agency to have a RWP was adopted in 2016, the Commission did not include in the rule the specific elements to be required as part of such plans. The Commission stated that, given the nature of recovery and resolution planning, a RWP would likely reflect the specific characteristics of the covered clearing agency (*e.g.*, its ownership, organizational, and operational structures, as well as its size, systemic importance, global reach, and/or the risks inherent in the products it clears).²⁰ Since that time, each covered clearing agency has developed an RWP pursuant to the requirement for such plans in Rule 17Ad-22. In addition, the Commission has, through its supervisory process and through its participation in the ongoing consideration of issues regarding covered clearing agency recovery and resolution, identified several elements that should be included in any RWP regardless of the market served or the products cleared, to ensure that planning is effective, thoughtful, and thorough. Accordingly, the Commission adopted new Rule 17Ad-26, which identified certain elements that a covered clearing agency would be required to include in an RWP and included definitions of recovery and orderly wind-down, which would identify the objective that these plans are designed to meet.²¹

New Rule 17Ad-26 promotes three important objectives: (i) bolstering the existing RWPs at covered clearing agencies; (ii) codifying some existing RWP elements to ensure that these elements remain in the plans over time; and (iii) establishing that the RWP of any new covered clearing agency would contain each of the elements specified in the rule. By advancing these objectives, Rule 17Ad-26 helps ensure that, in times of extreme market stress, the recovery or wind-down of a covered clearing agency can preserve financial stability and ensure the continuity of its critical functions.

There are collections of information contained in 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.

Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (“2024 Adopting Release”); see also Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Exchange Act Release No. 95763 (Sept. 14, 2022), 87 FR 64610 (Oct. 25, 2022) (“2022 Proposing Release”).

¹⁹ See Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plans, Exchange Act Release No. 101446 (Oct. 25, 2024), 89 FR 91000 (Nov. 18, 2024 (“Rule 17Ad-26 Adopting Release”)); see also 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”).

²⁰ See 2016 Adopting Release, 81 FR at 70808-09.

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

The statutory basis for 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

Rule 17Ad-26 requires 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 imposed under Rule 17Ad-26. The burden imposed by the rule will therefore be minimal and will likely be limited to the review of current policies and procedures and updating existing policies and procedures where appropriate to ensure compliance with the rule.

The purpose of the collection of information under 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 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 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 Rule 17Ad-26 do not duplicate information required to be collected by other Commission rules or regulations.

5. Effect on Small Entities

Rule 17Ad-26 applies to all registered covered clearing agencies. For the purposes of Commission rulemaking and, as applicable to 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.²²

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

²² See 17 CFR 240.0-10(d).

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 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 published the Rule 17Ad-26 Proposing Release to solicit comment on the new collection of information requirements and associated paperwork burdens for proposed Rule 17Ad-26.²³ 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 CFTC and the Federal Reserve Board (“FRB”), through public conferences, meetings, and informal exchanges. All comments received on the proposed rulemaking were posted on the Commission’s public website and made available through <https://www.sec.gov/rules-regulations/rulemaking-activity>. The Commission did not receive any comments concerning the associated paperwork burdens for proposed Rule 17Ad-26.

9. Payment or Gift

No payment or gift will be provided to any respondents.

10. Confidentiality

The collections of information in Rule 17Ad-26 impose recordkeeping burdens on all covered 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 covered 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 covered clearing agency can request confidential treatment for the records pursuant to Section 24(b) of the Exchange Act and Rule 24b-2 thereunder.²⁴

²³ See Rule 17Ad-26 Adopting Release, *supra* note 19.

²⁴ See 17 CFR 240.24b-2.

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

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

i. Number of Respondents

The requirements in Rule 17Ad-26 apply to all covered clearing agencies. Currently, there are six clearing agencies registered with the Commission.²⁵ 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 Rule 17Ad-26 would have seven respondents.

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 RWP, respondent covered clearing agencies generally have written rules, policies, and procedures similar to the requirements that are imposed under Rule 17Ad-26. The burden imposed by the rule will therefore be minimal and will likely be limited to the review of current policies and procedures and updating existing policies and procedures where appropriate to ensure compliance with the rule. Accordingly, the Commission preliminarily believes that a respondent covered clearing agency will incur a one-time burden of approximately 120 hours to review and update procedures,²⁶ or 40 hours when annualized over three years.²⁷

In addition, Rule 17Ad-26 will also impose ongoing burdens on a respondent covered clearing agency. The rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. The Commission preliminarily estimates that the ongoing activities required by Rule 17Ad-26 will impose an annual burden on a respondent covered clearing agency of 40 hours.²⁸

²⁵ Since the Commission issued the Rule 17Ad-26 Proposing Release, one covered clearing agency that provides CCP services has withdrawn its registration. See Release No. 34-98902 (Nov. 9, 2023), 88 FR 78428 (Nov. 15, 2023).

²⁶ 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.

²⁷ This figure was calculated as follows: 120 hours/3 years = 40 hours/year.

²⁸ This figure was calculated as follows: Assistant General Counsel for 10 hours + Compliance Attorney for 30 hours = 40 hours.

Therefore, the total aggregate annual industry-wide hourly burden imposed by Rule 17Ad-26 for the seven respondents is approximately 560 hours per year.²⁹

The Commission preliminarily estimates that the respondent covered clearing agencies would incur an aggregate internal one-time cost of approximately \$343,000 to review current policies and procedures and updating existing policies and procedures where appropriate.³⁰ The Commission preliminarily estimates that the ongoing monitoring and compliance activities with respect to the Rule 17Ad-26 would impose an aggregate ongoing cost on respondent covered clearing agencies of approximately \$133,000 per year.³¹

iii. Table Summary of Hourly Burdens

The table below summarizes the Commission’s estimates of the total hourly burdens for all respondents under 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. The 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	6	1	120	40	40	80	480
2	17Ad-26	Recordkeeping	1	1	120	40	40	80	80
		Subtotal	7						560

13. Costs to Respondents

²⁹ 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 7 respondents = 560 hours/year industry-wide burden.

³⁰ The estimate is based on the following calculations: \$11,460 (blended hourly rate for assistant general counsel at \$573 for 20 hours) + \$22,450 (blended hourly rate for compliance attorney at \$449 for 50 hours) + \$8,575 (blended hourly rate for business risk analyst at \$245 for 35 hours) + \$6,600 (blended hourly rate for senior risk management specialist at \$440 for 15 hours) ≈ \$49,000 x 7 respondents = \$343,000. Salaries for estimates presented in this section are derived from SIFMA’s Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. See also Rule 17Ad-26 Adopting Release, supra note 19, 89 FR at 91050.

³¹ The estimate is based on the following calculations: \$5,730 (blended hourly rate for assistant general counsel at \$573 for 10 hours) + \$13,470 (blended hourly rate for compliance attorney at \$449 for 30 hours) ≈ \$19,000 x 7 Respondents = \$133,000. See also 2024 Adopting Release, supra note 19, 89 FR at 91050.

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

Rule 17Ad-26 creates new burdens for covered clearing agencies. This submission provides the Commission’s initial estimates for the new burdens.

The estimated burden in the Rule 17Ad-26 Proposing Release included one more respondent than in the Rule 17Ad-26 Adopting Release. In the interim between proposal and adoption, one respondent covered clearing agency withdrew from registration with the Commission.³² The estimated burden in this submission reflects that change.

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

Not applicable. 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.

³² See Order Granting ICE Clear Europe Limited’s Request to Withdraw from Registration as a Clearing Agency, Exchange Act Release No. 98902 (Nov. 9, 2023), 88 FR 78428 (Nov. 15, 2023).