SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for

Rule 17a-4(b)(17) — Records to be Preserved by Certain Brokers and Dealers
OMB Control No. 3235-0806

A. JUSTIFICATION

1. Necessity of Information Collection

Regulation M is a set of prophylactic anti-manipulation rules that is designed to preserve the integrity of the securities trading markets as independent pricing mechanisms by prohibiting activities that could artificially influence the market for an offered security.[1] Rule 101 and Rule 102 of Regulation M prohibit distribution participants, their affiliated purchasers, issuers, selling security holders, and their affiliated purchasers from bidding for, purchasing, or attempting to induce any person to bid for or purchase, a covered security, during the applicable restricted period, unless an exception applies.[2]

Because securities of issuers of a certain credit quality trade based on their yield and credit-worthiness, and are less susceptible to the type of manipulation that Regulation M seeks to prevent,[3] Rule 101(c)(2)(i) and Rule 102(d)(2)(i) provide an exception for nonconvertible debt securities and nonconvertible preferred securities (together, "Nonconvertible Securities") of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model.[4] To facilitate Commission examinations of broker-dealers who rely on the probability-of-default-based exception for Nonconvertible Securities in Rule 101 or Rule 102, as applicable, Rule 17a-4(b)(17) requires broker-dealers to preserve the written probability of default determination relied upon pursuant to Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as applicable.

The record preservation requirements involving the written probability of default determinations under Rule 17a-4(b)(17) are mandatory if a broker-dealer relies on the exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) and thus impose "collection of information" requirements within the meaning of the Paperwork Reduction of 1995 ("PRA"). The title for the information collection included in this Supporting Statement is "Rule 17a-4(b)(17) Records to be Preserved by Certain Brokers and Dealers."

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1 *See Anti-manipulation Rules Concerning Securities Offerings*, Exchange Act Release No. 38067 (Dec. 20, 1996), [62 FR 520, 521 (Jan. 3, 1997)] ("Regulation M Adopting Release").

2 17 CFR 242.101(a) (distribution participants and their affiliated purchasers), 242.102(a) (issuers, selling security holders, and their affiliated purchasers).

3 *See* Regulation M Adopting Release, at 62 FR 527.

4 *See Removal of References to Credit Ratings From Regulation M*, Exchange Act Release No. 97657 (June 7, 2023), [88 FR 39962 (June 20, 2023)] ("2023 Adopting Release").

2. Information Collection Purpose and Use

The Commission believes that the information contained in the records required to be retained and kept pursuant to Rule 17a-4(b)(17) will be used to facilitate the Commission in conducting examinations of broker-dealers who rely on the exceptions in Rule 101(c)(2)(i) and Rule 102(d)(2)(i).

3. Consideration Given to Information Technology

Use of information technology could reduce regulatory burdens related to preserving the written probability of default determination under Rule 17a-4(b)(17).

4. Duplication

Rule 17a-4(b)(17) will not result in, or require, the collection of duplicate information that is otherwise available in a similar form. The Commission's record preservation requirement regarding Regulation M's probably-of-default-based standard is not collected elsewhere.

5. Effect on Small Entities

The Commission does not believe that any of the persons that will be impacted by Rule 17a-4(b)(17) are small entities under the relevant definitions. Small entities include broker-dealers with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,[5] or, if not required to file such statements, a broker-dealer who had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time it has been in business, if shorter), and is not affiliated with any person (other than a natural person) who is not a small business or small organization.[6] A small business or small organization, for purposes of "issuers" or "person" other than an investment company, is defined as a person who, on the last day of its most recent fiscal year, had total assets of $5 million or less.[7]

Based on the Commission's analysis of the existing information relating to broker-dealers who are subject to Rule 101, Rule 102, and Rule 17a-4, it is unlikely that any broker-dealer categorized as a "small business" or "small organization" under Rule 0-10[8] could serve as an underwriter or other distribution participant, as they would almost certainly have insufficient capital to participate in underwriting activities. In addition, the Commission continues to believe that none of the various persons affected by Rule 17a-4(b)(17) would qualify as a small entity under the Rule 0-10 definition as it is unlikely that any issuer of that size had investment grade securities that were eligible for the Investment Grade Exception. Accordingly, the Commission believes it is unlikely that, in the future, a small entity may become impacted by the amendments

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5 *See* 17 CFR 240.17a-5(d).

6 *See* 17 CFR 240.0-10(c).

7 17 CFR 240.0-10(a).

8 17 CFR 240.0-10.

because broker-dealers who enter this market are likely to have at least $500,000 in total capital, as described above, or to be affiliated with a person who is not a small business or small organization as defined under Rule 0-10, and because issuers of securities that are eligible for the exceptions in Rule 101(c)(2) and in Rule 102(d)(2) are likely to have total assets greater than $5 million.

6. Consequences of Not Conducting Collection

Absent Rule 17a-4(b)(17), which requires broker-dealers relying on the probability-of-default-based exception under Rule 101 or Rule 102, as applicable, to preserve the written probability of default calculation upon which they relied, the Commission would not have the same access to necessary records in conducting examinations of broker-dealers relying on those exceptions.

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

No payment or gift is provided to respondents.

10. Confidentiality

The Commission will not typically receive confidential information as a result of this collection of information. To the extent that the Commission receives—through its examinations or investigations, or by some other means—records or disclosures from a broker-dealer regarding probability of default determinations, such information will be kept confidential, subject to the provisions of applicable law.

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

The Commission estimated the hourly burden of the information collection as summarized in the chart below.

Summary of Hourly Burdens

		A.	B.	C.	D.	E.	F.	
Rule 17a-4(b)(17) Information Collections	**Type of Burden**	**Number of Entities Impacted**	**Annual Responses per Entity**	**Initial Burden per Entity per Response**	**Initial Burden Annualized per Entity per Response**	**Ongoing Burden per Entity per Response**	**Total Annual Burden Per Entity**	**Total Industry Burden**
					[**C ÷ 3** years]			
Preserving the written probability of default calculation (Rule 17a-4) **—Initial**	Recordkeeping	275	1	25	8.33	0	25	2,291.67
Preserving the written probability of default calculation (Rule 17a-4**)** **—Ongoing**	Recordkeeping	275	1	0	0	10	10	2,750
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS: 5,041.67								

As described in more detail below, Rule 17a-4(b)(17) results in two information collections: initial and ongoing recordkeeping burdens related to preserving the written probability of default calculation. These information collections apply to broker-dealers that choose to rely on the applicable exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) for Nonconvertible Securities. There were 166 lead managing underwriters, and 109 other non-lead manager broker-dealers of Nonconvertible Securities in 2024.[9] Therefore, 275 respondents will be subject to PRA burdens under Rule 17a-4(b)(17). The Commission believes that this number will remain roughly consistent because of the capital, expertise, and relationships needed to underwrite a nonconvertible security. The Commission, therefore, is estimating that 275 respondents will be subject to PRA burdens under the amendment to Rule 17a-4.

i. Preserving the Written Probability of Default Calculation (Rule 17a-4(b)(17))

Initial Burden

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9 The estimate is obtained using Mergent data for relevant securities during 2024. The previous PRA burden estimates from 2023 were obtained using Mergent data from 2021.

Rule 17a-4 requires broker-dealers relying on the exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) to preserve for a period of not less than three years, the first two years in an easily accessible place, the written probability of default determination relied upon. The burden imposed by Rule 17a-4(b)(17) is limited to the maintenance and preservation of the written records, as the burden for creating the records is accounted for in the PRA estimates and Supporting Statement for Rule 101. To the extent there are new (in relation to the previous estimates) respondents relying on the applicable exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i), the Commission estimates that the record preservation requirements under Rule 17a-4(b)(17) will impose an initial burden of 25 hours per respondent for updating the applicable policies and systems required to account for preserving the records made pursuant to Rule 101. Assuming that all 275 respondents are new entrants to the Nonconvertible Securities markets and need to update their policies and systems required to account for preserving the records made pursuant to Rule 101(c)(2)(i) (i.e., because they have not already done so), the Commission estimates that the total annual industry-wide initial burden for this requirement is 2,291.67 hours.[10]

Ongoing Burden

The Commission estimates that respondents will incur an internal ongoing annual burden of 10 hours per firm for maintaining such records, as well as to make additional updates to the applicable record preservation policies and systems to account for preserving the records pursuant to Rule 17a-4(b)(17). The Commission estimates that the total annual ongoing burden is 2,750 hours.[11]

Broker-dealers relying on the exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) must preserve the written probability of default determination made pursuant to Rule 101(c)(2)(i). The Commission estimates that it will take a distribution participant-respondent 25 hours to update the applicable policies and systems required to account for capturing the records made pursuant to Rule 101(c)(2)(i), for an aggregate internal cost of 2,000,625.[12] The Commission also

10 275 respondents × 25 hours = 6,875 hours for the total initial burden. As we plan to request a three-year approval period, we divide 6,875 by 3 to get 2,291.67 hours per year.

11 275 respondents × 10 hours = 2750 hours.

12 275 respondents x 25 hours x $291 per hour for an operational research analyst = $2,000,625. The costs used in the previous PRA estimate were based on a compliance manager's hourly wage. *See* 2023 Adopting Release, at 88 FR 39984 n.271, n.273. Because a compliance manager's wage, for purposes of the cost estimates in this PRA renewal, cannot be reasonably quantified, we are estimating the costs associated with the initial and ongoing PRA burdens for Rule 17a-4(b)(17) based on the hourly wage of the worker whose occupational profile most closely aligns with that of a compliance manager who is responsible for updating the applicable policies and systems required to account for capturing the records made pursuant to Rule 101(c)(2)(i), maintaining those records, and making any additional updates to the applicable record preservation policies and systems to account: an operations research analyst. This person is likely to formulate and apply mathematical modeling and other optimizing methods to develop and interpret information that assists management with decision making, policy formulation, or other managerial functions, as well as collect and analyze data and develop decision support software, services, or products. To calculate the occupational hourly rates used in this release, the Commission uses occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS

estimates that it will take a distribution participant 10 hours to maintain such records as well as to make additional updates to the applicable record preservation policies and systems to account for the rules, for an aggregate internal cost of $800,250.[13]

13. Costs to Respondents

There are no external capital, start-up, maintenance or operational cost burdens associated with this rule.

14. Costs to Federal Government

Not applicable as the collection of information is a recordkeeping requirement.

15. Changes in Burden

There are changes in estimated burden hours for both the initial and ongoing burdens in the 2023 Adopting Release due to a decrease in the estimated number of respondents from the previously reviewed 2023 Adopting Release PRA estimate. In the 2023 Adopting Release, the Commission estimated that there were 301 respondents, whereas the updated estimated number is 275 respondents. The changes are described in the chart below:

Information Collection Requirement	**Previously Reviewed Annual Industry Burden**	**New Estimated Annual Industry Burden**	**Change in Burden**	**Reason for Change**
Preserving the written probability of default	2,508.33 hours for 301 respondents at	2,291.67 hours for 275 respondents at	216.66 hours	Decrease in estimated number of respondents

523). *See Occupational Employment and Wage Statistics*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; *see also Standard Occupational Classification*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing th e industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is adjusted for changes in the seasonally adjusted employment cost index for private wages and salaries between the data reference period and when the data are released by BLS. *See Employment Cost Index*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/eci/. The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis's annual gross output data for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. *See Gross Output by Industry*, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; *Occupational Employment and Wage Statistics*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. The final product is the occupational hourly rate.

[13] 275 respondents x 10 hours x $291 per hour for an operational research analyst = $800,250. *See supra* note 12.

calculation (Rule 17a-4)—**Initial**	8.33 hours per respondent	8.33 hours per respondent		
Preserving the written probability of default calculation (Rule 17a-4)—**Ongoing**	3,010 hours for 301 respondents at 10 hours per respondent	2,750 hours for 275 respondents at 10 hours per respondent	260 hours	Decrease in estimated number of respondents

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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.