

RULE 17a-5

SUPPORTING STATEMENT

A. Justification

1. Necessity of the Collection of Information

Section 17(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) provides that the Securities and Exchange Commission (“Commission”) shall prescribe by rule the records to be kept and the reports to be made and disseminated by brokers and dealers. Under that section, the Commission has adopted Rule 17a-5 (“Rule”), which is the basic financial reporting rule for brokers and dealers. The Rule requires the filing of Form X-17A-5, the Financial and Operational Combined Uniform Single Report (“FOCUS Report”), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate all the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible.

The FOCUS Report consists of: (1) Part I which is a monthly report that must be filed by every broker or dealer that clears transactions or carries customer securities; (2) one of three alternative quarterly reports composed of a comprehensive Part II which must be filed by every broker or dealer that clears transactions or carries customer accounts, a less detailed Part IIA which must be filed by brokers and dealers that do not clear transactions or carry accounts, and a Part IIB that is filed only by specialized broker-dealer registered with the Commission as OTC Derivatives Dealers¹; (3) Supplemental Schedules which must be filed annually; and (4) a Facing Page which must be filed with the annual audited report of financial statements.

We are now proposing for comment amendments to Exchange Act Rule 17a-5 would provide for additional monthly, quarterly, and annual reports to be filed with the Commission by broker-dealers electing to use proposed Appendix E to Rule 15c3-1. The proposed amendments would be an integral part of the Commission’s financial responsibility program for broker-dealers electing to use Appendix E.

2. Purpose of and Consequences of Not Requiring the Collection of Information

The information is used to monitor the financial and operational condition of each broker or dealer by the self-regulatory organization that is the broker’s or dealer’s designated examining authority and by the Commission staff. The FOCUS Report and the annual audited report are the primary means of ensuring compliance with the Commission’s financial responsibility rules as prescribed by the Exchange Act. The Commission staff utilizes the FOCUS Report information in preparation for broker or dealer examinations and inspections. The completed forms also are used to determine which firms are engaged in various securities-related activities, the type and extent to which they are engaged in those activities, and how economic events and government

¹ Part IIB of Form X-17A-5 is required to be filed by OTC derivatives dealers under Rule 17a-12 and is subject to a separate PRA filing (OMB Control Number is 3235-0498).

policies might affect various segments of the securities industry. Additionally, the self-regulatory organizations review the information contained in the FOCUS Reports on a monthly or quarterly basis depending on the individual firm's reporting requirement. The FOCUS Report is a critical component of oversight of the broker or dealer firm's compliance with the Commission's financial responsibility rules. A firm's failure to comply with these rules would severely impair the Commission's and the self regulatory organizations' ability to protect customers.

Under the proposed amendments to Rule 17a-5, the information to be collected would be essential to the regulation of broker-dealers electing to use proposed Appendix E to Rule 15c3-1 and would assist us and the examining authorities responsible for reviewing the activities of these firms to monitor and enforce compliance with applicable Commission rules, including rules pertaining to financial responsibility. These periodic reports would also aid in evaluating the activities conducted by these broker-dealers and in anticipating, where possible, how these firms electing to use Appendix E to Rule 15c3-1 could be affected by significant economic events.

3. Role of Improved Information Technology and Obstacles to Reducing a Burden

The compilation and filing of the data required in the FOCUS Report are tailored to the complexity of the broker's or dealer's business, thus, the burden is commensurate with the type of business in which the firm engages. Additionally, as of 2008 year-end, approximately 82% of the annual responses to the Rule were filed electronically ($((29,530 - 5,190) / 29,530) = 82\%$).²

4. Efforts to Identify Duplication

The Commission originally designed the Rule to eliminate duplicative reporting requirements among the various securities regulatory agencies. Therefore, any duplication of information would be minimal.

5. Effect on Small Businesses

The majority of small brokers and dealers file Part IIA of Form X-17A-5 because they do not hold customer funds or securities. Unlike Part II, which is filed by firms that do hold customer funds and securities, Part IIA does not request information regarding customer funds and securities. Part IIA is 16 pages and requires much less time to complete than is required to complete Part II, which is 28 pages. Out of 530 firms that must file Part II, 16 are small firms. It would be inappropriate to provide the small firms with an exemption from this Rule because the report provides critical financial information of the firms responsible for the safekeeping and disposition of investors' money and securities.

With respect to the proposed amendments to Rule 17a-5, no small entities would be affected, as these provisions would be available only to broker-dealers that have tentative net

² The Commission notes this calculation does not include the annual audit filed under 17a-5(d). This number is lower than previous calculations, because the number of annual audits submitted in paper form has been subtracted.

capital of at least \$1 billion and net capital of at least \$500 million, well above the threshold for qualifying as a small business.

6. Purpose of and Consequences of Not Requiring the Information Collection

If the required activities were eliminated entirely, the protections afforded to the public would be lessened. Further, if the required collection were conducted less frequently, the financial information would become outdated.

7. Inconsistencies with Guidelines in 5 CFR 1320.8(d)

Not applicable. This collection is consistent with the guidelines in 5 CFR 1320.8(d).

8. Consultations Outside the Agency

The form was approved after years of study and comment by representatives of the securities industry through advisory committees and through the normal rule proposal method. No comments were received during the 60 day comment period prior to OMB's review.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The information in the FOCUS Report is confidential pursuant to Rule 17a-5(a)(3).

11. Sensitive Questions

Not applicable. No inquiries of a sensitive nature are made.

12. Estimate of Respondent Reporting Burden

The variation in the size and complexity of brokers and dealers subject to Rule 17a-5 and the differences in the FOCUS Report forms that must be filed under the Rule make it difficult to calculate the cost of compliance. However, we estimate, on average, that each report will require approximately 12 hours. At year-end 2008, the Commission estimates that there were approximately 5,190 brokers or dealers, and that of those firms there were approximately 530 brokers or dealers that clear transactions or carry customer securities. In addition, approximately 220 firms filed annual reports. The Commission therefore estimates that approximately 530 firms filed monthly reports, approximately 4,400 firms filed quarterly reports, and approximately 220 firms filed annual reports. In addition, approximately 5,190 firms filed annual audited reports. As a result, there were approximately 29,370 total annual responses $((530 \times 12) +$

$(4,400 \times 4) + 220 + 5,190 = 29,370$. This results in an estimated annual burden of 354,360 hours ($29,370$ annual responses $\times 12$ hours = 352,440).

In addition, we estimate that approximately 11 brokers or dealers will elect to use Appendix E to Rule 15c3-1 to compute certain of their capital charges (as of October 2009, seven brokers or dealers have elected to use Appendix E). We estimate that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is about 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, we estimate that the total additional annual burden for these 11 brokers or dealers is approximately 1,320 hours $((48 + 32 + 40) \times 11 = 1,320)$.

The Commission therefore estimates that the total annual burden under Rule 17a-5 is approximately 353,760 hours ($352,440 + 1,320 = 353,760$).

13. Estimate of Total Annualized Cost Burden

Other than the costs discussed in item 12 above, the Rule does not impose any additional costs.

14. Estimate of Cost to Federal Government

The Commission staff conducts approximately 650 broker and dealer examinations each year spending an average of one and one half hours reviewing a firm's FOCUS Report in preparation for each examination. Therefore, the Commission staff spends approximately 975 hours each year (650 examinations $\times 1.5$ hours) reviewing FOCUS Reports. The cost to the Commission including the value of staff time and related overhead is \$50 per hour resulting in a total annual cost of \$48,750 (975 hours \times \$50 per hour). These estimates have been computed based on the GSA, Guide to Estimating Reporting Costs (1973).

15. Explanation of Changes in Burden

Previously, at year end of 2005, the Commission estimated that there were approximately 6,200 registered brokers or dealers. At year end of 2005, there were approximately 36,387 total annual responses with the total annual hour burden as 434,400. However, as stated above, at year end of 2008 the Commission estimated that there were approximately 5,190 brokers or dealers and 29,370 total annual responses and with a total annual hour burden as 353,760. Thus, the change in annual burden (80,640) is due to changes in the number of respondents that file the form pursuant to Rule 17a-5.

16. Information Collections Planned for Statistical Purposes

Not applicable. The information collected is not used for tabulation, statistical analysis or publication.

17. Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable. The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification

Not applicable. The Commission is not seeking an exception to the certification statement.

B. Collection of Information Employing Statistical Methods

Not applicable. This collection does not involve statistical methods.