

Nonetheless, neither the Commission nor our registrants should be complacent. I reiterate this statement in the preamble: “[T]he Commission also reminds [swap dealers] and FCMs that their RMPs may require periodic updates to reflect and keep pace with technological innovations that have developed or evolved since the Commission first promulgated the RMP Regulations.” The benefit of a principles-based regulatory framework is that it can more quickly anticipate and adapt to changes in risk profiles or the operating environment. I believe our rules must be broad and flexible enough to be forward-looking and evergreen, because it is simply not possible to prescribe every last requirement for the unknown future. Accordingly, swap dealers and FCMs must be vigilant and address new and emerging risks in their RMPs through various risk stripes as appropriate—whether from changing market conditions, technological developments, geopolitical concerns, or any other event.

I welcome input from commenters to inform the Commission and the staff regarding the application of the RMP Rules to swap dealers and FCMs, especially those entities that are part of a banking organization, and to describe in a detailed manner the policies, procedures, processes, systems, controls, testing, and audits that are part of an RMP, and associated governance requirements. In this way, it will be more clearly apparent to the Commission and staff that the vast majority of swap dealers and FCMs are part of enterprise-wide risk management programs that the industry spends billions of dollars on each year, with thousands of personnel across the three lines of defense. In addition, the CFTC’s stringent RMP governance provisions ensure management accountability and responsibility, and the RMP Rules prescribe various requirements for swap dealers to address market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, and settlement risk,⁴ and for FCMs to address market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, settlement risk, segregation risk, technological risk, and capital risk.⁵

Of course, financial institutions can still have lapses in risk management and weaknesses in their control environment. This is evident in the high-profile news stories of the past few years. But the appropriate response is for regulators, including the CFTC and National Futures Association (NFA), to increase focus and resources on compliance examinations to ensure that swap dealers and FCMs are complying with the rules we *already* have—not piling on more rules that ultimately do not enhance sound risk management and governance, and further dilute limited resources, time, and attention.⁶ In instances of especially egregious or prolonged deficiencies, material weakness, or

misconduct by management, then enforcement actions may be appropriate, and the Commission should not shy away from this step.

[FR Doc. 2023–15056 Filed 7–17–23; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–97877; File No. S7–11–23]

RIN 3235–AN28

Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) proposes to amend the broker-dealer customer protection rule to require certain broker-dealers to perform their customer and broker-dealer reserve computations and make any required deposits into their reserve bank accounts daily rather than weekly. The Commission also is seeking comment on whether similar daily reserve computation requirements should apply to broker-dealers and security-based swap dealers with respect to their security-based swap customers.

DATES: Comments should be received on or before September 11, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7–11–23 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission’s website (<https://www.sec.gov/rules/proposed.shtml>).

Comments are also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission’s Public Reference Room. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director; Thomas K. McGowan, Associate Director; Randall W. Roy, Deputy Associate Director; Raymond Lombardo, Assistant Director; Sheila Dombal Swartz, Senior Special Counsel; Timothy C. Fox, Branch Chief; or Abraham Jacob, Special Counsel, at (202) 551–5500, Office of Broker-Dealer Finances, Division of Trading and Markets; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to:

Commission reference	CFR citation (17 CFR)
Rule 15c3–3	17 CFR 240.15c3–3.

Table of Contents

- I. Background
 - A. Introduction
 - B. Current Requirements of Rule 15c3–3 and Its Relation to SIPA
 - 1. Rule 15c3–3—Customer Accounts
 - 2. Rule 15c3–3—Proprietary Accounts of Broker-Dealers
 - 3. Broker-Dealer Liquidations and SIPA
 - C. The Risk of a Mismatch in Funds Owed and Funds Reserved Under Rule 15c3–3
- II. Proposed Amendments
 - A. Proposed Amendments to Rule 15c3–3
 - B. Request for Comment
- III. Request for Comment—Reserve Account Requirements for Security-Based Swaps
 - A. Discussion
 - B. Request for Comment
- IV. Economic Analysis
 - A. Introduction

⁴ 17 CFR 23.600(c)(1).

⁵ 17 CFR 1.11(e)(1)(i).

⁶ See Opening Statement of Commissioner Caroline D. Pham before the CFTC Technology Advisory Committee, March 22, 2023, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement032223>.

- B. Baseline
 - 1. Regulatory Baseline
 - 2. Affected Broker-Dealers
 - C. Benefits and Costs of the Proposed Amendments
 - D. Effects on Efficiency, Competition, and Capital Formation
 - E. Reasonable Alternatives
 - 1. Over-Funding of the Customer and PAB Reserve Bank Accounts
 - 2. A Threshold Based on a Different Metric
 - 3. Daily Computation Requirement for All Carrying Broker-Dealers
 - 4. A Higher or Lower Threshold for Daily Computation
 - 5. Calculation Based on the Maximum Value Over the Past Year
 - 6. Daily Computation if an Average Required Deposit Exceeds a Threshold
 - 7. Daily Computation Requirement Based on Average Total Credits per Number of Customer and PAB Accounts
 - 8. Daily Computation Based on Average Total Credits From the Most Recent Calendar Year
 - F. Request for Comment
 - V. Paperwork Reduction Act
 - A. Summary of Collections of Information Under the Proposed Rule Amendments
 - B. Proposed Use of the Information
 - C. Respondents
 - 1. Recordkeeping Requirements
 - 2. Notification Requirement
 - D. Total Annual Burden Estimate
 - 1. Recordkeeping Requirements
 - 2. Notification Requirement
 - 3. Summary of the Proposed Burden Revisions
 - E. Collections of Information are Mandatory
 - F. Confidentiality of Response to Collections of Information
 - G. Retention Period for Recordkeeping Requirements
 - H. Request for Comment
- VI. Small Business Regulatory Enforcement Fairness Act
- VII. Regulatory Flexibility Act Certification Statutory Authority

I. Background

A. Introduction

Pursuant to section 15(c)(3)(A) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ the Commission is proposing to amend the broker-dealer customer protection rule.² As discussed in more detail below,³ the rule requires broker-dealers that maintain custody of customer securities and cash (“carrying broker-dealers”) to have a special reserve account at a bank that must hold cash and/or qualified securities in an amount determined by a computation of the net cash owed to the broker-dealer’s customers. Generally, carrying broker-dealers are required to perform the customer reserve computation and make any required deposits into the customer

reserve bank account weekly. Rule 15c3–3 also permits carrying broker-dealers to perform the customer reserve computation more frequently than weekly (*e.g.*, daily), and, in certain limited circumstances, to perform a monthly computation. Rule 15c3–3 also addresses the manner in which a carrying broker-dealer holds proprietary securities and cash in accounts of other broker-dealers, known as PAB accounts. “PAB account” generally means a proprietary securities account of a broker-dealer.⁴ For example, a broker-dealer that is not a carrying broker-dealer (*e.g.*, an introducing broker-dealer) may hold its proprietary cash and securities at a carrying broker-dealer. In this case, the securities account of the introducing broker-dealer held at the carrying broker-dealer would be a PAB account and the introducing broker-dealer would be a PAB account holder of the carrying broker-dealer. While broker-dealers are not treated as customers under Rule 15c3–3, the rule requires a carrying broker-dealer to have a separate special reserve account at a bank for PAB account holders; such special reserve bank account must hold cash and/or qualified securities in an amount determined by a computation of the net cash owed to PAB account holders. Generally, carrying broker-dealers are required to perform the PAB reserve computation and make any required deposits into the PAB reserve bank account weekly, similar to the requirements for the customer reserve bank account.

The proposed amendments would require carrying broker-dealers that had large amounts of cash owed to customer and PAB accounts holders (*i.e.*, large total credits), measured by both their customer and PAB reserve computations for the previous twelve month ends (*i.e.*, a rolling twelve month average), to perform those computations and make any required deposits into their respective customer and PAB reserve bank accounts daily (rather than weekly). Cash owed to customers and PAB account holders may include cash proceeds received from sales of securities, cash deposited by customers and PAB account holders for the purposes of purchasing securities, and monthly or quarterly dividends received on behalf of customers and PAB account

holders. These carrying broker-dealers—because they have owed large amounts of cash to their customers and PAB account holders—can incur large deposit requirements from time to time. This can lead to situations where—for a period of days—the net amount of cash owed to customers and PAB account holders is substantially greater than the amounts held in their combined customer and PAB reserve bank accounts. The proposed daily computation would shorten the period during which this mismatch between the net amount owed and the amount on deposit exists. The objective of the proposal is to reduce the risk caused by this mismatch for carrying broker-dealers where the difference between the net amount owed and the amount on deposit potentially is substantial. Large mismatches can lead to correspondingly large shortfalls in the amounts available in the customer and PAB reserve bank accounts to make customers and PAB account holders whole if the carrying broker-dealer fails financially. As explained below, these potential shortfalls could lead to large-scale harm (*e.g.*, delayed satisfaction of customer or PAB account holder claims for securities and cash) or substantial losses (the inability to satisfy those claims in full) if a carrying broker-dealer with a large mismatch is liquidated in a formal proceeding under the Securities Investor Protection Act of 1970 (“SIPA”).⁵

B. Current Requirements of Rule 15c3–3 and Its Relation to SIPA

1. Rule 15c3–3—Customer Accounts

Rule 15c3–3 is designed to give specific protection to customer funds and securities, in effect forbidding broker-dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers. For example, a broker-dealer is “virtually” precluded from using customer funds to buy securities for its own account.⁶ To meet this objective, Rule 15c3–3 requires a carrying broker-dealer to take two primary steps to safeguard these assets, as described in this section below. The steps are designed to protect customers by segregating their securities and cash from the carrying broker-dealer’s proprietary business activities. If the carrying broker-dealer fails financially, the customer securities and cash should

⁴ The term “PAB account” means a proprietary securities account of a broker-dealer (which includes a foreign broker-dealer, or a foreign bank acting as a broker-dealer) other than a delivery-versus-payment account or a receipt-versus-payment account. 17 CFR 240.15c3–3(a)(16). The term does not include an account that has been subordinated to the claims of creditors of the carrying broker-dealer. *Id.*

⁵ See 15 U.S.C. 78aaa *et seq.*

⁶ See *Net Capital Requirements for Brokers and Dealers*, Exchange Act Release No. 21651 (Jan. 11, 1985), 50 FR 2690, 2690 (Jan. 18, 1985). See also *Broker-Dealers; Maintenance of Certain Basic Reserves*, Exchange Act Release No. 9856 (Nov. 17, 1972), 37 FR 25224, 25224 (Nov. 29, 1972).

¹ 15 U.S.C. 78o(c)(3)(A).

² 17 CFR 240.15c3–3.

³ See sections I.B.1. and I.B.2. of this release.

be readily available to be returned to the customers. In addition, if the failed carrying broker-dealer is liquidated under SIPA, the customer securities and cash should be isolated and readily identifiable as “customer property” and, consequently, available to be distributed to customers ahead of other creditors.⁷

The first step required by Rule 15c3-3 is that a carrying broker-dealer must maintain physical possession or control over customers’ fully paid and excess margin securities.⁸ Control means the carrying broker-dealer must hold these securities in one of several locations specified in Rule 15c3-3 and free of liens or any other interest that could be exercised by a third-party to secure an obligation of the carrying broker-dealer.⁹ Permissible locations include a clearing

corporation and a “bank,” as defined in section 3(a)(6) of the Exchange Act.¹⁰

The second step is that a carrying broker-dealer must maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers.¹¹ The account must be titled “Special Reserve Bank Account for the Exclusive Benefit of Customers” (“customer reserve bank account”).¹² The amount of net cash owed to customers is computed weekly as of the close of the last business day of the week pursuant to a formula set forth in Exchange Act Rule 15c3-3a (“Rule 15c3-3a”) (“customer reserve computation”).¹³ Under the customer reserve computation, the carrying

broker-dealer adds up customer credit items and then subtracts from that amount customer debit items.¹⁴ The credit items include credit balances in customer accounts (*i.e.*, cash owed to customers) and funds obtained through the use of customer securities (*e.g.*, a loan from a bank collateralized with customer margin securities).¹⁵ The debit items include money owed by customers (*e.g.*, from margin lending), securities borrowed by the carrying broker-dealer to effectuate customer short sales, and margin required and on deposit with certain clearing agencies as a consequence of customer securities transactions.¹⁶ If credit items exceed debit items, the net amount must be on deposit in the customer reserve bank account in the form of cash and/or qualified securities.¹⁷ The carrying

⁷ At a high level, in such a liquidation, SIPA would provide for the appointment of a trustee who is required to return customer name securities to customers of the debtor (15 U.S.C. 78fff-2(c)(2)), distribute the fund of “customer property” ratably to customers (15 U.S.C. 78fff-2(b)), and obtain cash advances from the Securities Investor Protection Corporation (“SIPC”) from the fund administered by SIPC (“SIPC Fund”) to satisfy remaining customer net equity claims, to the extent provided by SIPA (15 U.S.C. 78fff-2(b) and 3(a)). Customer property is defined as “cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted.” 15 U.S.C. 78fff-2(b)(4). See also section I.B.3. of this release (discussing broker-dealer liquidations under SIPA in more detail).

⁸ See 17 CFR 240.15c3-3(d). The term “fully paid securities” means all securities carried for the account of a customer in a cash account as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System (12 CFR 220.1 *et seq.*) (“Regulation T”), as well as securities carried for the account of a customer in a margin account or any special account under Regulation T that have no loan value for margin purposes, and all margin equity securities in such accounts if they are fully paid: provided, however, that the term fully paid securities does not apply to any securities purchased in transactions for which the customer has not made full payment. 17 CFR 240.15c3-3(a)(3). The term “margin securities” means those securities carried for the account of a customer in a margin account as defined in section 4 of Regulation T (12 CFR 220.4), as well as securities carried in any other account (such accounts referred to as “margin accounts”) other than the securities referred to in paragraph (a)(3) of Rule 15c3-3 (*i.e.*, fully paid securities). 17 CFR 240.15c3-3(a)(4). The term “excess margin securities” means those securities referred to in paragraph (a)(4) of Rule 15c3-3 (*i.e.*, margin securities) carried for the account of a customer having a market value in excess of 140% of the total of the debit balances in the customer’s account or accounts encompassed by paragraph (a)(4) of Rule 15c3-3, which the broker-dealer identifies as not constituting margin securities. 17 CFR 240.15c3-3(a)(5).

⁹ See 17 CFR 240.15c3-3(c). A carrying broker-dealer does not treat customer securities as its own assets. Rather, the carrying broker-dealer holds them in a custodial capacity, and the possession and control requirement is designed to ensure that the carrying broker-dealer treats them in a manner that allows for their prompt return.

¹⁰ *Id.* In 2020, the Commission issued a statement describing its position that, for a period of five years, special purpose broker-dealers operating under the circumstances set forth in the statement will not be subject to a Commission enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer fully-paid and excess margin crypto asset securities for purposes of Rule 15c3-3. See *Commission Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers*, Exchange Act Release No. 90788 (Dec. 23, 2020), 86 FR 11627 (Feb. 21, 2021). While the proposed amendments would apply to all carrying broker-dealers, including special purpose broker-dealers, the amendments would not alter the current possession and control requirements of Rule 15c3-3 for any broker-dealer. See also Division of Trading and Markets, Commission and Office of General Counsel, FINRA, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (Jul. 8, 2019), available at <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities>. The 2019 staff statement represents the views of the staff. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. This staff statement, like all staff statements, has no legal force or effect: it does not alter or amend applicable law; and it creates no new or additional obligations for any person.

¹¹ 17 CFR 240.15c3-3(e). The term “qualified security” is defined in Rule 15c3-3 to mean a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States (collectively, “U.S. Government securities”) for purposes of this release. See 17 CFR 240.15c3-3(a)(6).

¹² See 17 CFR 240.15c3-3(e)(1). The purpose of giving the account this title is to alert the bank and creditors of the carrying broker-dealer that this reserve fund is to be used to meet the carrying broker-dealer’s obligations to customers (and not the carrying broker-dealer’s obligations to general creditors) in the event the carrying broker-dealer is liquidated in a formal proceeding.

¹³ See 17 CFR 240.15c3-3a. Some carrying broker-dealers choose to perform a daily computation. See 17 CFR 240.15c3-3(e)(3)(iv). Further, the rule permits carrying broker-dealers in certain limited circumstances to perform a monthly computation. These circumstances include: (1) the broker-dealer must have aggregate indebtedness not exceeding 800 percent of net capital; (2) the broker-dealer carries aggregate customer funds, as computed at the last required computation, not exceeding \$1,000,000; and (3) the broker-dealer must deposit in its customer reserve bank account not less than 105% of the amount computed under the customer reserve formula. See 17 CFR 240.15c3-3(e)(3)(i).

¹⁴ See 17 CFR 240.15c3-3a.

¹⁵ See 17 CFR 240.15c3-3a, Items 1–9. Credits in the customer reserve computation include—among other credits—free credit balances and other credit balances in customers’ securities accounts, monies borrowed collateralized by securities carried for the accounts of customers, and monies payable against customers’ securities loaned. See 17 CFR 240.15c3-3a, Items 1–3, respectively. Carrying broker-dealers are permitted to use customer margin securities to, for example, obtain bank loans to finance the funds used to lend to customers to purchase the securities. The amount of the bank loan is a credit in the customer reserve computation—which is accounted for in Item 2—because this is the amount that the carrying broker-dealer would need to pay the bank to retrieve the securities. Similarly, carrying broker-dealers may use customer margin securities to make stock loans to other broker-dealers in which the lending broker-dealer typically receives cash in return. The amount payable to the other broker-dealer on the stock loan is a credit in the customer reserve computation—which is accounted for in Item 3—because this is the amount the broker-dealer would need to pay the other broker-dealer to retrieve the securities. See also *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants and Broker-Dealers; Final Rule*, Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550, 68690 (Dec. 16, 2019) (containing FOCUS Report Part II—Computation for Determination of Customer Reserve Requirements).

¹⁶ See 17 CFR 240.15c3-3a, Items 10–14. 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; Proposed Rule*, Exchange Act Release No. 95763 (Sept. 14, 2022), 87 FR 64610 (Oct. 25, 2022) (proposing a new Item 15 in Rule 15c3-3a to permit margin required and on deposit at a covered clearing agency for U.S. Treasury securities to be included as a debit item in the customer and PAB reserve computations, subject to certain conditions). The Commission encourages commenters to review the U.S. Treasury security clearing proposal to determine whether it might affect their comments on this proposing release.

¹⁷ 17 CFR 240.15c3-3(e). Customer cash is a balance sheet item of the carrying broker-dealer (*i.e.*, the amount of cash received from a customer increases the amount of the carrying broker-dealer’s assets and creates a corresponding liability to the customer). The customer reserve computation is designed to isolate these carrying broker-dealer assets so that an amount equal to the net liabilities to customers is held as a reserve in the form of cash or U.S. Government securities. The requirement to

broker-dealer must make a deposit into the customer reserve bank account by 10 a.m. of the second business day following the “as of” date of the new computation if the computation shows the amount required to be on deposit in the customer reserve bank account is greater than the amount currently on deposit in the account.¹⁸ Conversely, if the computation shows the amount required to be on deposit in the customer reserve bank account is less than the amount currently on deposit in the account, the carrying broker-dealer can withdraw the difference.¹⁹ A carrying broker-dealer also is required to make and maintain a record of each computation.²⁰

The customer reserve computation permits the carrying broker-dealer to offset customer credit items only with customer debit items.²¹ This means the carrying broker-dealer can use customer cash to facilitate customer transactions such as financing customer margin loans and borrowing securities to make deliveries of securities customers have sold short.²² The broker-dealer margin rules require securities customers to maintain a minimum level of equity in

maintain this reserve is designed to effectively prevent the carrying broker-dealer from using customer funds for proprietary business activities such as investing in securities. The goal is to put the carrying broker-dealer in a position to be able to readily meet its cash obligations to customers by requiring the carrying broker-dealer to make deposits of cash and/or U.S. Government securities into the customer reserve bank account in the amount of the net cash owed to customers.

¹⁸ For carrying broker-dealers performing a weekly customer reserve computation as of the close of the last business day of the week, the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. See 17 CFR 240.15c3-3(e)(3)(i). For example, a carrying broker-dealer would perform the customer reserve computation on Monday as of the close of business on the previous Friday and generally be required to make the necessary deposit no later than 10 a.m. Tuesday.

¹⁹ See 17 CFR 240.15c3-3(e).

²⁰ See 17 CFR 240.15c3-3(e)(3)(v). Each record must be preserved in accordance with Rule 17a-4. *Id.*

²¹ See 17 CFR 240.15c3-3(e)(2); 17 CFR 240.15c3-3a.

²² For example, if a carrying broker-dealer holds \$100 for customer A, the carrying broker-dealer can use that \$100 to finance a security purchase of customer B (*i.e.*, make a margin loan to customer B). The \$100 the carrying broker-dealer owes customer A is a credit in the formula and the \$100 customer B owes the carrying broker-dealer is a debit in the formula. Therefore, under the customer reserve computation there would be no requirement to maintain cash and/or U.S. Government securities in the customer reserve bank account. However, if the carrying broker-dealer did not use the \$100 held in customer A's account for this purpose, there would be no offsetting debit and, consequently, the carrying broker-dealer would need to have on deposit in the customer reserve bank account cash and/or U.S. Government securities in an amount at least equal to \$100.

their securities accounts (*i.e.*, the customer's ownership interest in the account, computed by adding the current market value of long securities and the amount of any credit balance and subtracting the current market value of all short securities and the amount of any debit balance).²³ In other words, the cash and the market value of the customer's securities in the account must be sufficiently larger than the sum of the cash borrowed by the customer and market value of the securities sold short by the customer. In addition to protecting the carrying broker-dealer from the consequences of a customer default, this equity serves to over-collateralize customers' obligations to the broker-dealer. This buffer protects the customers whose cash was used to facilitate the carrying broker-dealer's financing of securities transactions of other customers (*i.e.*, margin loans and short sales). For example, if the carrying broker-dealer fails, the customer debits—because they generally are over-collateralized—should be attractive assets for another broker-dealer to purchase or, if not purchased by another broker-dealer, they should be able to be liquidated to a net positive equity.²⁴ The

²³ Broker-dealers are subject to margin requirements in Regulation T, in rules promulgated by the broker-dealer self-regulatory organizations (“SRO”) (*see, e.g.*, FINRA Rules 4210-4240 and Cboe Exchange, Inc. Rules 10.1-10.12), and with respect to security futures, in rules jointly promulgated by the Commission and the Commodity Futures Trading Commission (17 CFR 242.400-406). Broker-dealers also may establish their own margin requirements, so long as they are as restrictive as regulatory margin requirements. These requirements are often referred to as “house” margin requirements. *See, e.g.*, FINRA Rule 4210(d) (requiring broker-dealers to establish procedures to formulate their own margin requirements). *See also* FINRA Rule 4210(a)(5) (defining the term “equity” for purposes of FINRA margin requirements).

²⁴ The attractiveness of the over-collateralized debits facilitates the bulk transfer of customer accounts from a failing or failed carrying broker-dealer to another broker-dealer. Regulation T, SRO margin rules, and a broker-dealer's house margin rules help to ensure the customer maintains a minimum level of equity in their account, *i.e.*, that the debit is over-collateralized. For example, if a customer purchases a listed equity security, they can borrow up to 50% of the purchase price from the broker-dealer using the purchased security as collateral for the loan. This is known as initial margin. After a customer buys securities on margin, SRO margin rules require the customer to maintain a minimum amount of equity in their securities margin account. This is known as maintenance margin. SRO margin rules require a customer to maintain at least 25% of the total market value of the margin securities in their account. For example, if a customer purchases \$16,000 of listed equity securities, the customer can borrow \$8,000 from the broker-dealer and pay \$8,000 in cash. If the market value of the listed equity securities falls to \$12,000, the equity in the securities margin account would total \$4,000 (\$12,000 – \$8,000 = \$4,000) and the broker-dealer's loan to the customer would be over-collateralized by \$4,000. The customer would be in compliance with the 25% SRO maintenance margin

proceeds of the debits sale or liquidation can be used to repay the customer cash used to finance customer obligations. This cash plus the cash and/or qualified securities held in the customer reserve bank account should equal or exceed the total amount of customer credit items as of the customer reserve computation date (*e.g.*, as of the close of business on Friday).²⁵ However, as discussed below, activity subsequent to the customer reserve computation date can result in the carrying broker-dealer having large amounts of additional credit items that do not get accounted for until the next customer reserve computation and do not get reserved for until the next deposit into the customer reserve bank account.²⁶ This can lead to a mismatch between the net amount of cash owed to customers and the amount currently on deposit in the customer reserve bank account.

2. Rule 15c3-3—Proprietary Accounts of Broker-Dealers

Carrying broker-dealers also may carry accounts that hold proprietary securities and cash of other broker-dealers, known as PAB accounts.²⁷ Broker-dealers are not within the definition of “customer” for purposes of Rule 15c3-3.²⁸ The definition of “customer” in SIPA, however, is broader than the definition in Rule 15c3-3 in that the SIPA definition includes broker-dealers.²⁹ As discussed in more detail below, broker-dealers—as customers under SIPA—have the right to a *pro rata* share of customer property in a SIPA liquidation.³⁰

requirement of \$3,000 as well (25% of \$12,000 = \$3,000). See 12 CFR 220.12(a) and FINRA Rule 4210(c)(1).

²⁵ See *Net Capital Requirements for Broker-Dealers; Amended Rules*, Exchange Act Release No. 18417 (Jan. 13, 1982), 47 FR 3512, 3513 (Jan. 25, 1982). The alternative method is founded on the concept that if the debit items in the reserve formula can be liquidated at or near their contract value, these assets, along with any cash required to be on deposit under the customer protection rule, will be sufficient to satisfy all customers-related liabilities (which are represented as credit items in the reserve formula).

²⁶ See section I.C. of this release (explaining the implications of a weekly computation).

²⁷ 17 CFR 240.15c3-1(a)(16).

²⁸ 17 CFR 240.15c3-3(a)(1) (The term customer shall mean any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer, a municipal securities dealer, or a government securities broker or government securities dealer.). *Id.*

²⁹ See 15 U.S.C. 78lll(2).

³⁰ See section I.B.3. of this release (discussing broker-dealer liquidations under SIPA in more detail). While broker-dealers as “customers” under SIPA have a right to a *pro rata* share of customer

Continued

Because broker-dealers are entitled to a *pro rata* share of customer property, Rules 15c3–3 and 15c3–3a require carrying broker-dealers to: (1) perform a separate reserve computation for PAB accounts in addition to the customer reserve computation described above (“PAB reserve computation”);³¹ (2) establish and fund a separate bank account titled “Special Reserve Bank Account for Brokers and Dealers” (“PAB reserve bank account”); and (3) obtain and maintain physical possession or control of non-margin securities carried for a PAB account holder unless the carrying broker-dealer has provided written notice to the PAB account holder that it may use those securities in the ordinary course of its securities business, and has provided opportunity for the PAB account holder to object to such use.³² These requirements provide similar protections to the securities and cash a carrying broker-dealer maintains for PAB account holders as are provided for the securities and cash the broker-dealer maintains for customers. The objective in applying these similar protections is to reduce the risk that, in the event a carrying broker-dealer is liquidated under SIPA, the claims of SIPA customers (*i.e.*, customers and PAB account holders) will exceed the amount of customer property available and, thereby, expose the SIPC Fund and potentially SIPA customers to losses.³³ In addition, if the customer property is insufficient to fully satisfy all SIPA customer claims and losses are incurred, the PAB account holders could be placed in financial distress. This could cause adverse impacts to the securities markets beyond those resulting from the failure of the carrying broker-dealer, given that the PAB account holders—as broker-dealers—provide services to

property in a SIPA liquidation, they are not entitled to receive an advance from the SIPC Fund. *See* 15 U.S.C. 78fff–3(a). *See infra* section I.B.3. of this release (discussing advances from the SIPC Fund as a customer protection for certain customers in a SIPA liquidation).

³¹ *See supra* section I.B.1. of this release (discussing Rule 15c3–3 and customer accounts).

³² 17 CFR 240.15c3–3(b)(5) and (e). *See also* *Financial Responsibility Rules for Broker-Dealers; Final Rule*, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824, 51827–31 (Aug. 21, 2013) (adopting a PAB reserve computation and possession and control requirements for securities held in PAB accounts under Rule 15c3–3) (“Financial Responsibility Rules for Broker-Dealers”).

³³ *See* Financial Responsibility Rules for Broker-Dealers, 78 FR at 51827–28.

investors and others who participate in those markets.³⁴

Similar to the customer reserve computation, the amount of net cash owed to PAB account holders is computed weekly as of the close of the last business day of the week pursuant to the formula set forth in Rule 15c3–3a.³⁵ Specifically, carrying broker-dealers perform the PAB reserve computation using the formula in Rule 15c3–3a—which is used to perform the customer reserve computation—with modifications that tailor the computation to PAB (*i.e.*, broker-dealer) accounts as compared with customer accounts.³⁶ If credit items exceed debit items, the net amount owed to PAB account holders must be on deposit in the PAB reserve bank account in the form of cash and/or qualified securities. The carrying broker-dealer must make a deposit into the PAB reserve bank account if the computation shows an increase in the reserve requirement.³⁷ If the computation shows a decrease in the reserve requirement, the carrying broker-dealer may withdraw the difference. Finally, consistent with the requirements for the customer reserve computation, the PAB reserve computation permits the carrying broker-dealer to offset PAB credit items only with PAB debit items.³⁸

³⁴ *Id.*

³⁵ *See* Rule 15c3–3a. Some carrying broker-dealers choose to perform the PAB reserve computation daily. *See* 17 CFR 240.15c3–3(e)(3)(iv). Further, Rule 15c3–3 permits certain carrying broker-dealers to perform the PAB reserve computation monthly if they do not carry customer accounts or conduct a proprietary trading business. *See* 17 CFR 240.15c3–3(e)(3)(iii).

³⁶ *See* 17 CFR 240.15c3–3a, Notes Regarding the PAB Reserve Bank Account Computation. For example, Note 1 states that broker-dealers should use the customer reserve formula for the purposes of computing the PAB reserve formula, except that references to “accounts,” “customer accounts,” or “customers” will be treated as references to PAB accounts. Further, Note 2 provides that any credit (including a credit applied to reduce a debit) that is included in customer reserve formula may not be included as a credit in PAB reserve formula. *Id.*

³⁷ For carrying broker-dealers performing the PAB reserve computation weekly, as of the close of the last business day of the week, the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. *See* 17 CFR 240.15c3–3(e)(3)(i). Carrying broker-dealers also may satisfy a PAB reserve bank account deposit requirement with excess debits from the customer reserve computation from the same date. However, a deposit requirement from the customer reserve computation may not be satisfied with excess debits from the PAB reserve computation. *See* 17 CFR 240.15c3–3(e)(4).

³⁸ *See* 17 CFR 240.15c3–3(e)(2); 17 CFR 240.15c3–3a.

3. Broker-Dealer Liquidations and SIPA

SIPA became law in 1970 with the purpose of affording certain protections against loss to customers resulting from broker-dealer failure and, in doing so, promote investor confidence in the nation’s securities markets.³⁹ SIPA established SIPC and directed SIPC to establish the SIPC Fund.⁴⁰ The protections afforded by SIPA are designed to work as a “back stop” to the broker-dealer net capital rule,⁴¹ which requires broker-dealers to maintain net liquid assets in excess of all liabilities to customers and other creditors, and Rule 15c3–3. SIPC oversees the liquidation of SIPC-member broker-dealers that fail financially and where customer assets the broker-dealer holds (*i.e.*, cash or securities) are missing from customers’ securities accounts (*i.e.*, broker-dealers that cannot return these assets through a self-liquidation).⁴² For example, cash and securities may be missing from customers’ securities accounts in cases of unauthorized trading or embezzlement. The Commission has authority to oversee SIPC, including to conduct inspections of SIPC and to approve or disapprove changes to SIPC’s bylaws and rules.⁴³

In a SIPA liquidation of a broker-dealer, SIPC and a court-appointed trustee work to return customers’ cash and securities as quickly as possible. Customers under SIPA (“SIPA customers”) generally are entitled to a number of protections. These protections include the right to share *pro rata* with other SIPA customers in the customer property held by the broker-dealer.⁴⁴ Broker-dealers with securities accounts at the failed broker-dealer—as SIPA customers—have the right to a *pro rata* share of the customer property in a SIPA liquidation.⁴⁵

³⁹ *See* 2022 SIPC Annual Report at 4, available at <https://www.sipc.org/media/annual-reports/2022-annual-report.pdf>.

⁴⁰ *See* 15 U.S.C. 78ccc(a)(1) and 78ddd(a)(1).

⁴¹ 17 CFR 240.15c3–1.

⁴² With some limited exceptions set forth in SIPA, all registered broker-dealers are SIPC members. 15 U.S.C. 78ccc(a)(2). SIPC is a non-profit member organization created in 1970 under SIPA. 15 U.S.C. 78ccc(a).

⁴³ 15 U.S.C. 78ggg(c) and 78ccc(e).

⁴⁴ *See* 15 U.S.C. 78fff–2(c).

⁴⁵ *See* 15 U.S.C. 78fff–2(c) and 15 U.S.C. 78fff–3(a).

Consequently, when a carrying broker-dealer is liquidated in a SIPA proceeding, each customer (including a SIPA customer that is a broker-dealer) has a priority claim on the customer property compared to general unsecured creditors of the carrying broker-dealer.⁴⁶ The SIPA protections also include the ability for a SIPA customer—other than a SIPA customer that is a broker-dealer—to receive an advance from the SIPC Fund of up to \$500,000 (of which \$250,000 can be used to cover cash claims), if the amount of customer

property is insufficient to satisfy the customer's claim for securities and/or cash.⁴⁷

The SIPC Fund largely is financed through assessments paid to SIPC by its broker-dealer members.⁴⁸ The SIPC Fund is used to pay SIPC's expenses, the administrative costs of a SIPA liquidation to the extent the broker-dealer's estate is insufficient to cover those costs, and—as noted above—to pay advances to SIPA customers whose claims cannot be fully satisfied by the estate of a failed carrying broker-

dealer.⁴⁹ The SIPC Fund—which consists of cash and U.S. Government securities—totaled approximately \$4.05 billion as of December 31, 2022.⁵⁰ The schedule for calculation of the annual assessment for SIPC members is governed under the SIPC bylaws and generally depends on the level of SIPC's unrestricted net assets.⁵¹ The current assessment rate is 0.15 percent of net operating revenues.⁵² A summary of the possible level of SIPC assessments is as follows:

TABLE 1—SIPC ASSESSMENT SCHEDULE

Unrestricted net assets/SIPC Fund balance	Annual assessment rate
Unrestricted net assets \$2.5–<\$5 billion (and reasonably likely to remain less than \$5 billion but not less than \$2.5 billion).	0.15% of net operating revenues.
SIPC Fund balance of \$150 million—unrestricted net assets of <\$2.5 billion.	0.25% of net operating revenues.
SIPC Fund balance \$100 million–<\$150 million	Determined by SIPC, but not less than 0.25% of gross revenues.
SIPC Fund balance below \$100 million	Determined by SIPC, but not less than 0.5% of gross revenues.
Unrestricted net assets ≥\$5 billion (and reasonably likely to remain >\$5 billion (after review of study ¹ and consultation with Commission and SROs)).	SIPC may not more than once in any four-year period, increase or decrease the assessment rate by up to, but not more than, 25% of the assessment rate in effect at that time.

¹ When unrestricted net assets total \$5 billion, SIPC will commission a study every four years to examine the adequacy of SIPC's unrestricted net asset balance and the SIPC Fund and the appropriate assessment rate. See section 6(a)(1)(C) and (D) of SIPC's Bylaws.

In addition to the Commission's requirements under Rule 15c3–3, if either the Commission or any SRO, such as FINRA, is aware of facts which lead it to believe that any broker-dealer subject to its regulation is in or is approaching financial difficulty, it must immediately notify SIPC, and, if such notification is by an SRO, the Commission.⁵³ In a case when an SRO notifies SIPC about a broker-dealer, and that broker-dealer has taken steps to either reduce or liquidate its business, either voluntarily or at the direction of the SRO, the SRO may render such assistance or oversight to such broker-dealer as it considers appropriate to protect the interests of customers of

such broker-dealer.⁵⁴ However, any actions the SRO takes do not prevent or act as a bar from SIPC from taking an action as well.⁵⁵ If SIPC finds that a broker-dealer has failed, or is in danger of not meeting its obligations to customers, SIPC can initiate steps to begin a customer protection proceeding. For example, SIPC may, upon notice to its broker-dealer member, file an application for a protective decree with any court that has jurisdiction (*i.e.*, a Federal District Court), whether or not the broker-dealer consents.⁵⁶ In addition, no member of SIPC that has customers may enter into bankruptcy, insolvency, or a receivership without approval from SIPC, except as provided

in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁵⁷

C. The Risk of a Mismatch in Funds Owed and Funds Reserved Under Rule 15c3–3

Carrying broker-dealers receive customer- and PAB-related cash inflows in connection with various securities transactions, including cash proceeds received from sales of securities, cash deposited by customers and PAB account holders for the purposes of purchasing securities, and monthly or quarterly dividends received on behalf of customers and PAB account holders. Cash credited to customers and PAB account holders often is quickly re-invested by the customer or PAB

⁴⁶ As discussed above in section I.B.2. of this release, this is why Rules 15c3–3 and 15c3–3a require carrying broker-dealers to perform a PAB reserve computation for PAB account holders. SIPA liquidations generally involve customer claims and the claims of general unsecured creditors. Customer claims are satisfied out of the customer estate, while general unsecured claims are paid from the general estate (any remaining assets). To the extent a customer's claims are not fully satisfied through advances from the SIPC Fund and the customer's share of the customer estate, a customer will be eligible to receive a distribution as a general creditor to the extent that there are any general estate assets. See 15 U.S.C. 78fff–2(c)(1).

⁴⁷ 15 U.S.C. 78fff–3.

⁴⁸ 15 U.S.C. 78ddd(c) and (d). The SIPC Fund is also financed through interest on U.S. Government securities held in the SIPC Fund. See 2022 SIPC Annual Report at 4.

⁴⁹ In the event that the SIPC Fund is or may reasonably appear to be insufficient for the

purposes of SIPA, the Commission is authorized to lend SIPC up to \$2.5 billion, which the Commission, in turn, would borrow from the U.S. Treasury. 15 U.S.C. 78ddd(g) and (h). The Commission has not borrowed funds under the authority in SIPA since the legislation was enacted in 1970.

⁵⁰ Currently, the objective is to build the SIPC Fund to a level of \$5 billion. See 2022 SIPC Annual Report at 3, 10. Between 1970 and 2022, SIPC has facilitated the return of cash and securities for accounts of customers of failed broker-dealers totaling approximately \$142 billion. Of that amount, approximately \$141.2 billion came from broker-dealer estates and \$917 million came from trustee advances from the SIPC Fund. *Id.* at 8. Further, of the approximately 770,400 customer claims from completed, or substantially completed, cases that were satisfied between 1970 and 2022, only 355 claims were for cash and securities valued greater than the limits of protection afforded by SIPA. *Id.* at 9.

⁵¹ See Article 6, Assessments of SIPC Bylaws. SIPC's unrestricted net assets are SIPC's total assets (including the SIPC Fund) less liabilities, which include estimated costs to complete ongoing SIPA liquidations. See 2022 SIPC Annual Report at 20. See also 15 U.S.C. 78ddd(c) and (d) and 2022 SIPC Annual Report at 21.

⁵² See *Assessment Rate*, available at <https://www.sipc.org/for-members/assessment-rate>. The amount of each SIPC member's assessment for the member's fiscal year is the product of the assessment rate established by SIPC for that fiscal year and either the member's gross revenues or net operating revenues from the securities business. See Section 6(a)(1) of SIPC's Bylaws.

⁵³ See 15 U.S.C. 78eee(a)(1).

⁵⁴ See 15 U.S.C. 78eee(a)(2).

⁵⁵ *Id.*

⁵⁶ See 15 U.S.C. 78eee(a)(3)(A). See also 15 U.S.C. 78eee(b)(1) (detailing court proceedings).

⁵⁷ See 15 U.S.C. 78eee(a)(3)(B).

account holder in securities such as money market mutual funds or securities held by the customer or PAB account holder that are subject to dividend re-investment plans. This cash also may be swept out of the customer's or PAB account holder's securities account at the carrying broker-dealer to a bank or money market mutual fund as part of a program in which customers' and PAB account holders' free credit balances are automatically invested in the mutual fund or bank deposit product on the prior authorization of the customer or PAB account holder ("sweep program").⁵⁸ When customers and PAB account holders use their free credit balances to invest in securities or bank deposit products, the amount of cash held by a carrying broker-dealer for them is reduced and, therefore, the amount that needs to be deposited into the customer or PAB reserve bank account also is reduced.

Carrying broker-dealers, however, may receive large cash inflows that are not deployed for or on behalf of the customers or PAB account holders prior to the next required customer and PAB reserve computations and deposits into the customer and PAB reserve bank accounts. In this situation, the value of the cash and/or qualified securities in the customer and PAB reserve bank accounts may not equal the net cash owed to customers and PAB account holders for a period of time. For example, assume a carrying broker-dealer performs its customer and PAB reserve computations weekly as required under Rule 15c3-3 (*i.e.*, it has not elected to perform a daily computation or meet the conditions in the rule to perform a monthly computation). Typically, the carrying broker-dealer would perform the customer and PAB reserve computations on Monday using credit and debit amounts as of the close of business on the previous Friday. If the Monday computation showed a deposit requirement, the carrying broker-dealer would need to make that deposit by 10 a.m. the following business day, which typically would be Tuesday. In this example, cash inflows received by the carrying broker-dealer on Monday through Friday would not be accounted for until the carrying broker-dealer

⁵⁸ See 17 CFR 240.15c3-3(j)(2)(ii) (setting forth requirements under Rule 15c3-3 for this type of a program for customer accounts). Broker-dealers are not customers under Rule 15c3-3. Therefore, PAB account holders are not subject to the sweep program requirements under the rule with respect to their free credit balances. See 17 CFR 15c3-3(a)(1). Nonetheless, PAB account holders may elect to have their free credit balances included in a sweep program.

performs the next customer and PAB reserve computations on the Monday of the following week and would not be reserved for until the carrying broker-dealer makes the required deposits into the customer and PAB reserve bank accounts no later than 10 a.m. on Tuesday of the following week. Consequently, for a number of days, the net amount of cash owed to customers and PAB account holders could be greater than the amounts deposited into the customer and PAB reserve bank accounts.⁵⁹

This mismatch poses a risk to the carrying broker-dealer's customers and PAB account holders that the carrying broker-dealer could fail financially and be unable to return all the securities and cash owed to the customers and PAB account holders. In this situation, the carrying broker-dealer would be liquidated under SIPA, and SIPA would be required to advance money from the SIPA Fund—but not to PAB account holders—to the extent the fund of customer property was insufficient to make customers whole through the *pro rata* distribution. As discussed above, the amount that can be advanced to each customer is capped at \$500,000 (of which \$250,000 can be used to cover cash claims).⁶⁰ Therefore, if the

⁵⁹ To further illustrate this risk, assume on Monday of Week 1 a carrying broker-dealer performs a customer reserve computation that shows as of close-of-business on Friday of the previous week the broker-dealer had total credits of \$30 billion and total debits of \$25 billion and, therefore, had excess credits over debits of \$5 billion. Assume further, the carrying broker-dealer had \$4.8 billion of cash and qualified securities on deposit in its customer reserve bank account. Under Rule 15c3-3, the carrying broker dealer would need to deposit \$200 million into its customer reserve bank account no later than 10 a.m. on Tuesday of Week 1. Assume further that the carrying broker-dealer receives \$3 billion of cash inflows on Monday of Week 1 but does not facilitate any customer transactions during Week 1 that generate additional debits and the customers do not deploy the \$3 billion to purchase securities or into a sweep program. In this scenario, the \$3 billion of cash inflows on Monday of Week 1 would not get accounted for in the customer reserve formula until the carrying broker-dealer performs the customer reserve computation on Monday of Week 2. Assuming all else stays the same, the Week 2 customer reserve computation would result in a deposit requirement of \$3 billion, which would need to be made no later than 10 a.m. on the Tuesday of Week 2. This means the net amount of cash owed to customers was \$8 billion and the amount on deposit in the customer reserve bank account was \$4.8 billion on Monday through 10 a.m. on Tuesday of Week 1 and \$5 billion from 10 a.m. on Tuesday of Week 1 through 10 a.m. on Tuesday of Week 2. Consequently, the difference between the net amount of cash owed to customers and the amount on deposit in the customer reserve bank account was \$3.2 billion for Monday of Week 1 through 10 a.m. on Tuesday of Week 1 and \$3 billion from 10 a.m. on Tuesday of Week 1 through 10 a.m. on Tuesday of Week 2.

⁶⁰ See section I.B.3. of this release (discussing broker-dealer liquidations under SIPA in more detail).

mismatch was sufficiently large, customers' claims may not be satisfied in full. Further, because PAB account holders—as broker-dealers—are not entitled to advances from the SIPA Fund, their claims for securities and cash would be at greater risk of not being satisfied in full. This could expose the PAB account holder to financial stress and increased risk of liquidation.⁶¹

As of the end of 2022, 162 carrying broker-dealers reported total credits in their customer reserve computation of greater than \$0.⁶² These carrying broker-dealers reported an aggregate amount of total customer credits of \$1.03 trillion. In addition, 82 carrying broker-dealers reported total credits in their PAB reserve computation of greater than \$0. These carrying broker-dealers reported an aggregate amount of PAB account holder total credits of \$166.3 billion.⁶³ Moreover, some of these carrying broker-dealers have been required to deposit large amounts of additional cash and/or qualified securities into their customer and/or PAB reserve bank accounts after performing their customer and/or PAB reserve computations. For example, during the 2022 calendar year, the largest required additional deposits into the customer reserve bank accounts of these carrying broker-dealers ranged from approximately \$1.6 billion to over \$6.0 billion following the customer reserve

⁶¹ See section IV.C. of this release (discussing the benefits and costs of the proposed amendments).

⁶² This number of carrying broker-dealers is based on information reported by broker-dealers as of Dec. 31, 2022, in Form X-17A-5, the Financial and Operational Combined Uniform Single Report ("FOCUS Report"). The FOCUS Reports showed that 162 carrying broker-dealers reported total credits of greater than \$0 on Line 4430 of the report (total credits in the customer reserve formula). Total credits in the customer reserve computation is the sum of customer credits in the formula, including—among other credits—free credit balances and other credit balances in customers' securities accounts (Line 4340), monies borrowed collateralized by securities carried for the accounts of customers (Line 4350), and monies payable against customers' securities loaned (Line 4360). See also section IV.B.2. of this release (estimating that there are 187 broker-dealers that may currently fall within the scope of the Rule 15c3-3 based on carrying activities). This estimate includes broker-dealers that did not report credits greater than \$0 and/or that reported being exempt from the provisions of Rule 15c3-3.

⁶³ FOCUS Report data as of Dec. 31, 2022, showed that 82 broker-dealers reported total credits of greater than \$0 on Line 2170 of the report (total credits in the PAB reserve formula). Total credits in the PAB reserve computation is the sum of PAB account holder credits in the formula, including—among other credits—free credit balances and other credit balances in PAB securities accounts (Line 2110), monies borrowed collateralized by securities carried for the accounts of PAB (Line 2120), and monies payable against PAB securities loaned (Line 2130).

computation.⁶⁴ Furthermore, during the 2022 calendar year, the largest required additional deposits into their PAB reserve bank accounts ranged from approximately \$350 million to over \$4.0 billion.⁶⁵ The carrying broker-dealers that reported the largest amounts of total credits for their customers and PAB account holders (and that exceeded the proposed \$250 Million Threshold discussed below) were more likely to experience larger mismatches and the dollar amounts underlying those mismatches were significantly larger (than carrying broker-dealers that do not exceed the proposed \$250 Million Threshold).⁶⁶

These large deposit requirements indicate that there may be times when the net amount of cash owed to customers and PAB account holders is substantially greater than the amounts on deposit in the customer and PAB reserve bank accounts. As explained above, this creates the potential risk that a carrying broker-dealer could fail financially and not be able to fully satisfy claims of customers and PAB account holders for securities and cash. Moreover, given the potential size of this mismatch between the cash owed and the cash reserved, the failure of a carrying broker-dealer that has large total credits could cause widespread harm and potentially substantial losses (as discussed above). It also potentially could deplete the SIPC Fund resulting in the need to increase assessments on SIPC's broker-dealer members to replenish it, with the resulting costs potentially being passed through to investors.⁶⁷

⁶⁴ This is based on the 25 largest additional deposit requirements reported in the monthly FOCUS Reports filed during the 2022 calendar year.

⁶⁵ This is based on the 25 largest additional deposit requirements reported in the monthly FOCUS Reports filed during the 2022 calendar year. The largest additional deposit requirements were made by carrying broker-dealers that also had the 20 largest credit balances based on 2022 FOCUS Report data. In addition to large deposit requirements, the customer and PAB reserve computations also permitted some carrying broker-dealers to make large withdrawals from both their customer and PAB reserve bank accounts during the 2022 calendar year. For example, during the 2022 calendar year, the 25 largest withdrawals from customer reserve bank accounts ranged from approximately \$1.3 billion to \$6.0 billion, and the 25 largest withdrawals from PAB reserve bank accounts ranged from \$241.7 million to \$3.5 billion.

⁶⁶ This is based on the carrying broker-dealers that reported the largest amounts of total credits on their FOCUS Reports as of Dec. 31, 2022, and comparing them to the carrying broker-dealers that reported the largest deposits for the 2022 calendar year. See also section II.A.1. of this release (discussing the proposed \$250 Million Threshold) and Table 5 in section IV.B.2. of this release (detailing broker-dealer deposits and withdrawals as a share of reserve accounts for the year 2022).

⁶⁷ See section IV.C. of this release (discussing the benefits and costs of the proposed amendments).

To address these risks, the Commission is proposing amendments to Rule 15c3-3 to require carrying broker-dealers with large total credits—the carrying broker-dealers most likely to have large customer and PAB additional deposit requirements—to increase the frequency of their customer and PAB reserve computations from weekly to daily. The objective is to more dynamically match the net amount of cash owed to customers and PAB account holders with the amount on deposit in the carrying broker-dealer's customer and PAB reserve bank accounts by shortening the timeframe that a mismatch can exist.⁶⁸ This objective also should enhance the customer protection requirements of Rule 15c3-3.

In addition, performing daily (rather than weekly) customer and PAB reserve computations would allow large carrying broker-dealers to more effectively manage their cash flows and liquidity. For example, a carrying broker-dealer that performs weekly computations generally cannot withdraw excess cash or U.S. Government securities from either its customer or PAB reserve bank accounts until the following week even if the value of the account assets exceeds the net cash owed to customers or PAB account holders during the current week. While Rule 15c3-3 currently permits a carrying broker-dealer to elect

⁶⁸ To illustrate how a daily computation would reduce this risk, assume on Monday a carrying broker-dealer performs a customer reserve computation that shows as of the close-of-business on Friday of the previous week the broker-dealer had total credits of \$30 billion and total debits of \$25 billion and, therefore, had excess credits over debits of \$5 billion. Assume further, the carrying broker-dealer had \$4.8 billion of cash and qualified securities on deposit in its customer reserve bank account. Under a daily computation, the carrying broker-dealer would need to deposit \$200 million into its customer reserve bank account no later than 10 a.m. on Tuesday of that week. Assume further that the carrying broker-dealer receives \$3 billion of cash inflows on Monday but does not facilitate any customer transactions that generate any additional debits and the customers do not deploy the \$3 billion to purchase securities or into a sweep program. Under a daily requirement, the carrying broker-dealer would perform a customer reserve computation on Tuesday as of the close of business on Monday that would account for the \$3 billion in cash inflows received on Monday and be required to deposit \$3 billion into the customer reserve bank account by 10 a.m. on Wednesday of the same week. Consequently, the mismatch would exist from the point in time on Monday when the \$3 billion was received until 10 a.m. on Wednesday of the same week when \$3 billion would need to be deposited into the customer reserve bank account (approximately two full days). Under a weekly requirement, this mismatch would exist from the point in time on Monday when the \$3 billion was received until 10 a.m. on Tuesday of the following week when the next deposit into the customer reserve bank account would need to be made (approximately eight full days).

to perform its customer and PAB reserve calculations more frequently than weekly,⁶⁹ a practical effect of requiring carrying broker-dealers to perform daily customer and PAB reserve computations would be to permit them to withdraw these excess funds and securities more quickly. A number of carrying broker-dealers currently elect to perform daily customer and PAB reserve computations, including eleven of the largest carrying broker-dealers.⁷⁰ Finally, an additional 52 carrying broker-dealers that would be required to begin performing daily customer and PAB computations under the proposed rule (*i.e.*, those carrying broker-dealers that are not already voluntarily performing daily computations) may incur increased compliance costs.⁷¹ As further discussed in the Economic Analysis in section IV. of this release, these costs and benefits may ultimately be passed through to customers and PAB account holders of the affected carrying broker-dealers.⁷²

II. Proposed Amendments

A. Proposed Amendments to Rule 15c3-3

In order to address the mismatch risk discussed above and enhance customer protection requirements, the Commission is proposing amendments to Rule 15c3-3 that would require carrying broker-dealers with large amounts of total credits to perform the customer and PAB reserve computations daily (rather than weekly).⁷³ More specifically, the amendments would add paragraph (e)(3)(i)(B) to Rule 15c3-3.⁷⁴

⁶⁹ See 17 CFR 240.15c3-3(e)(3)(iv).

⁷⁰ Based on FOCUS Report data for the 2022 calendar year, these carrying broker-dealers are among the largest broker-dealers measured by average total credits and total assets. These 11 carrying broker-dealers accounted for 64 percent of the total amount of average total credits among all carrying-broker-dealers with positive customer or PAB credits reported in 2022. See section IV.B.2. of this release (discussing baseline of affected broker-dealers in the economic analysis).

⁷¹ Based on FOCUS Report data for the 2022 calendar year.

⁷² See section IV. of this release (discussing the benefits and costs of the proposed amendments).

⁷³ See section I.C. of this release (discussing the mismatch risk).

⁷⁴ See paragraph (e)(3)(i)(B) to Rule 15c3-3, as proposed to be amended. In addition, the Commission is proposing the following conforming amendments to paragraph (e)(3)(i) of Rule 15c3-3: (1) paragraph (e)(3)(i) would be re-lettered paragraph (e)(3)(i)(A); and (2) the text in paragraph (e)(3)(i) regarding monthly computations would be set forth in new paragraph (e)(3)(i)(C). Further, the phrase “[e]xcept as provided in paragraphs (e)(3)(i)(B)(1) and (C) of this section” would be added to the beginning of paragraph (e)(3)(i)(A) of Rule 15c3-3, as proposed to be amended, to clarify that the weekly computation requirement in paragraph (e)(3)(i)(A) applies unless the carrying

Continued

This paragraph would provide that a carrying broker-dealer with average total credits that are equal to or greater than \$250 million must make the computation necessary to determine the amounts required to be deposited in the customer and PAB reserve bank accounts daily as of the close of the previous business day.⁷⁵ The paragraph would further provide that the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. For example, a carrying broker-dealer performing the computation on Tuesday as of the close of business on Monday, would be required to make the deposit on Wednesday, assuming all three days are business days. On Wednesday, the carrying broker-dealer would perform the computation as of the close of business Tuesday and be required to make the deposit on Thursday (assuming Thursday is a business day).

For purposes of paragraph (e)(3) of Rule 15c3-3, the Commission is proposing to define average total credits as the arithmetic mean of the sum of total credits in the customer reserve computation and PAB reserve computation reported in the twelve most recently filed month-end FOCUS Reports (“\$250 Million Threshold”).⁷⁶ The proposed definition of average total credits is designed to serve as a straightforward way for the carrying broker-dealer to determine whether its total credits equal or exceed the \$250 Million Threshold. In addition, using the arithmetic mean of total credit amounts reported in the twelve most recently filed month-end FOCUS Reports to calculate the average total credits is designed to account for the fact that a carrying broker-dealer’s total credits may fluctuate. A rolling average based on twelve most recently filed month-end FOCUS Reports would provide for a more stable and representative metric as compared to basing the calculation on a single filing such as the most recently filed FOCUS Report.

broker-dealer is subject to the daily computation requirement of paragraph (e)(3)(i)(B)(1) or meets the conditions of paragraph (e)(3)(i)(C) to perform a monthly computation.

⁷⁵ The text of paragraph (e)(3)(i)(B) of Rule 15c3-3, as proposed to be amended, is modelled closely on the current text of paragraph (e)(3)(i) of Rule 15c3-3.

⁷⁶ See paragraph (e)(3)(i)(B)(1) of Rule 15c3-3, as proposed to be amended. This would mean the carrying broker-dealer would add up the sum of the total credits reported in the customer and PAB reserve computations in each of the twelve most recently filed month-end FOCUS Reports and divide that amount by 12 to calculate the arithmetic mean of the total credits.

The proposed \$250 Million Threshold is designed to apply the daily computation requirement to carrying broker-dealers that have large amounts of total credits. Based on FOCUS Report data, these carrying broker-dealers are the ones more likely to experience larger mismatches between the net cash they owe customers and PAB account holders and the amounts they have on deposit in their customer and PAB reserve bank accounts, and the dollar amounts underlying those mismatches are significantly larger than carrying broker-dealers below the \$250 Million Threshold.⁷⁷ The proposed \$250 Million Threshold is designed to provide a balanced demarcation between carrying broker-dealers with large amounts of total credits relative to smaller carrying broker-dealers (with lower average total credits), the former of which are more likely to incur larger mismatches in any given year, and are more likely to better absorb any potential increase in compliance costs.⁷⁸

Based on regulatory filings for the period of January 2022 through December 2022, the \$250 Million Threshold would apply the proposed daily computation requirement to approximately 63 carrying broker-dealers.⁷⁹ These broker-dealers include 11 carrying broker-dealers that already voluntarily perform the customer reserve computation daily.⁸⁰ Under the

⁷⁷ Based on FOCUS Report data for the 2022 calendar year. See also Table 5 in section IV.B.2. of this release (detailing broker-dealer deposits and withdrawals as a share of reserve accounts for the year 2022).

⁷⁸ See section IV.C. of this release (discussing the costs and benefits of the proposed \$250 Million Threshold).

⁷⁹ This estimate is based on the arithmetic mean of the sum of total credits in the customer and PAB reserve computations reported in each required monthly FOCUS Report filed for the 12 months ended Dec. 31, 2022. All of these broker-dealers reported total credits in their customer reserve computation during the 2022 calendar year. Approximately fourteen carrying broker-dealers that exceeded the \$250 Million Threshold reported no credits in their PAB reserve computations during the 2022 calendar year. The number of affected carrying broker-dealers may vary month to month because the proposed \$250 Million Threshold is based on a 12-month rolling average. For example, the number of affected carrying broker-dealers varied monthly from 60 to 63 over the period from January 2022 through May 2023. There was little variation, however, in the identity of the affected carrying broker-dealers. The same 59 carrying broker-dealers met the proposed \$250 Million Threshold in each month, and from one to four additional carrying broker-dealers met the threshold in any given month. In total, over this period, 63 different carrying broker-dealers would have been affected. See Figure 1 (Number of Affected Broker-Dealers under 12-Month Rolling Average, Over the Period from January 2022–May 2023) in section IV.B.2. of this release.

⁸⁰ This is based on FOCUS Report data as of Dec. 31, 2022. Based on FOCUS Report data for 2022, ten

proposed \$250 Million Threshold, approximately 100 carrying broker-dealers would continue to be subject to a weekly customer and/or PAB reserve computation requirement.⁸¹ In summary, in proposing the \$250 Million Threshold, the Commission seeks to reasonably balance the enhancements to customer protection under Rule 15c3-3 through reductions in the mismatch risk, with the potential increases in compliance costs and staffing that may be necessary to perform a daily computation.⁸²

The Commission is proposing to require that a carrying broker-dealer comply with the daily computation requirement for the customer and PAB reserve bank accounts no later than six months after having average total credits that equal or are greater than \$250 million.⁸³ The purpose is to provide time for a carrying broker-dealer to prepare to perform a daily computation after it exceeds the \$250 Million Threshold. A carrying broker-dealer in this situation may need to add resources in order to perform the computations, including hiring or assigning additional staff to perform the daily computations.

Once a carrying broker-dealer begins to perform daily customer and PAB reserve computations (because it exceeded the \$250 Million Threshold), the proposed amendments would require it to continue performing daily customer and PAB reserve computations for at least 60 days after it falls below the \$250 Million Threshold. More specifically, under paragraph (e)(3)(i)(B)(2) of Rule 15c3-3, as proposed to be amended, a carrying broker-dealer performing daily computations, whose average total credits falls below the \$250 Million Threshold, could elect to perform weekly computations under paragraph (e)(3)(i)(A) of Rule 15c3-3 by notifying its designated examining authority in writing.⁸⁴ In order to revert to a weekly computation, the carrying broker-dealer would need to wait 60 calendar days after notifying its designated examining authority, in writing, of its election to

out of these 11 carrying broker-dealers were among the 20 largest carrying broker-dealers in terms of the largest average total credits. All 11 of these carrying broker-dealers that currently perform their customer reserve computation daily are among the 30 largest carrying broker-dealers in terms of average total credits.

⁸¹ This estimate is based on 162 carrying broker-dealers that reported total credits greater than \$0 on their FOCUS Reports as of Dec. 31, 2022.

⁸² See section IV. of this release (discussing the costs and benefits of the proposed \$250 Million Threshold).

⁸³ See paragraph (e)(3)(i)(B)(1) of Rule 15c3-3, as proposed to be amended.

⁸⁴ See paragraph (e)(3)(i)(B)(2) of Rule 15c3-3, as proposed to be amended.

perform weekly computations before it could switch to performing weekly computations.⁸⁵ The purpose of this requirement is to provide the designated examining authority with prior notice of the switch and to provide the designated examining authority with the opportunity to contact the firm and ask how it intends to implement the change. This would assist the designated examining authority in monitoring the firm.

If a carrying broker-dealer that provided the 60-day notice under the proposal reverts to a weekly (rather than daily) customer and PAB reserve computation and subsequently exceeds the \$250 Million Threshold once again, the proposed rule would require the carrying broker-dealer to comply with the daily computation requirement no later than six months after having average total credits equal to or greater than \$250 million.⁸⁶ This would be the same process as when a carrying broker-dealer exceeded the \$250 Million Threshold for the first time. The purpose of this requirement would be to provide the carrying broker-dealer time to prepare to perform a daily computation. Carrying broker-dealers that fall below the \$250 Million Threshold and revert to weekly customer and PAB reserve computations may reduce the resources they dedicate to performing the computations. Therefore, these carrying broker-dealers would need some time to enhance their operational resources in order to increase the frequency of the computations again. However, this may be an infrequent occurrence given that few carrying broker-dealers likely would maintain average total credits that is close to the \$250 Million Threshold. Further, a carrying broker-dealer could choose to continue to perform daily customer and PAB reserve computations even after it falls below the \$250 Million Threshold, given the practical effect on liquidity as a result of the ability to make more frequent withdrawals from its customer and PAB reserve bank accounts. The largest carrying broker-dealers likely would be required to

perform daily computations on an ongoing basis because their average total credits would far exceed the proposed \$250 Million Threshold.⁸⁷

The Commission also is proposing to amend paragraph (e)(3)(iv) of Rule 15c3-3. Current paragraph (e)(3)(iv) of Rule 15c3-3 provides that computations in addition to the computations required in paragraph (e)(3) (*i.e.*, the weekly computation and permitted monthly computation) may be made as of the close of any business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.⁸⁸ The amendment to paragraph (e)(3)(iv) would provide that computations, other than those made under paragraph (e)(3)(i)(B)(1) of Rule 15c3-3, as proposed to be amended (*i.e.*, the daily computations), may be made as of the close of any business day.⁸⁹ This amendment would specify that the option to perform a customer or PAB reserve computation more frequently than weekly or monthly (as applicable) remains available to carrying broker-dealers that are required to make such computations on a weekly or monthly basis. Carrying broker-dealers currently performing daily customer and PAB reserve computations have used this option.

B. Request for Comment

The Commission requests comments from all members of the public on all aspects of the proposed rule amendments. Commenters are requested to provide empirical data in support of any arguments or analyses. With respect to any comments, the Commission notes that they are of the greatest assistance to this rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to the Commission's proposals where appropriate. In addition, the Commission is requesting comment on the following specific aspects of the proposals:

1. The objective of the proposed amendments is to address the risk that is created when the amount of net cash owed to customers and PAB account holders by a carrying broker-dealer is greater than the amount on deposit in the broker-dealer's customer and PAB

reserve bank accounts and the amount of that difference is substantial. Are there ways—other than requiring daily customer and PAB reserve computations—to address this risk? If so, identify them and explain how they would more appropriately address this risk. For example, rather than a daily customer and PAB reserve computation requirement, should Rule 15c3-3 be modified to require a carrying broker-dealer to deposit cash and/or qualified securities in the customer and PAB reserve bank accounts in an amount that is a multiple of the required amount computed under the customer and PAB reserve computations (*i.e.*, overfund the customer and PAB reserve bank accounts weekly)? If so, explain why. If not, explain why not. If Rule 15c3-3 were to be modified in this way, should the multiple of the amount computed under the customer and PAB reserve computations be 105%, 110% or some other percentage? If so, explain why.

2. Should the definition of average total credits be modified to use a subset of credit items rather than total credits? If so, explain why. If not, explain why not. For example, rather than using the sum of total credits from the customer reserve computation (Line 4430 of the FOCUS Report) and the PAB reserve computation (Line 2170 of the FOCUS Report), should the definition use the sum of free credit balances and other credit balances from the customer reserve computation (Line 4340 of the FOCUS Report) and the PAB reserve computation (Line 2110 of the FOCUS Report)? If so, explain why. If not, explain why not. If the definition used free credit balances and other credit balances, the amounts reported by a carrying broker-dealer would be less than the amounts reported using total credits (as free credit balances and other credit balances are one of several components of total credits). Therefore, if the definition used free credit balances and other credit balances, should the \$250 Million Threshold be adjusted downward to account for the lower amounts that would be reported by carrying broker-dealers? If so, explain why. If not, explain why not. For example, if the definition were to be modified in this way, should the threshold be lowered to \$200 million, \$150 million, or \$100 million, or some other lower amount? If so, explain why. If not, explain why not.

3. Should the definition of average total credits be modified so that it is based on a different set of filed FOCUS Reports? If so, explain why. If not, explain why not. For example, should it be the arithmetic mean of the total credits in the customer and PAB reserve

⁸⁵ To illustrate how this would work, assume a carrying broker-dealer has been required to perform daily customer and PAB reserve computations for five years. Assume further that with the filing of the FOCUS Report for the October month-end in the fifth year the carrying broker-dealer calculates its average total credits and the amount is below the \$250 Million Threshold. At this point, the carrying broker-dealer could provide notice to its designated examining authority of its election to begin performing the customer and PAB reserve computations weekly. It would need to wait 60 days after providing that notice before it could begin performing those computations weekly.

⁸⁶ See paragraph (e)(3)(i)(B)(1) of Rule 15c3-3, as proposed to be amended.

⁸⁷ This is based on FOCUS Report data for the 12 months ended Dec. 31, 2022.

⁸⁸ See 17 CFR 240.15c3-3(e)(3)(iv).

⁸⁹ This proposed amendment would insert the phrase "other than computations made under paragraph (e)(3)(i)(B)(1) of this section," following the words "this paragraph (e)(3)," in current paragraph (e)(3)(iv) of Rule 15c3-3.

computations reported in each required FOCUS Report filed during the most recently ended calendar year? If so, explain why. If not, explain why not. Should it be the arithmetic mean of the FOCUS Reports filed for the previous four calendar quarters? If so, explain why. If not, explain why not.

4. Should the \$250 Million Threshold be modified to be set at a higher or lower threshold?⁹⁰ If so, explain why. If not, explain why not. For example, should the threshold be \$50 million, \$100 million, \$150 million, \$200 million, \$300 million, \$500 million, or \$1 billion? If so, recommend a different threshold and explain why it would be appropriate.

5. Should Rule 15c3-3 be modified to require a carrying broker-dealer to perform daily customer and PAB reserve computations using a different metric for the threshold? For example, if Rule 15c3-3 were to be modified in this way, should the threshold be based on a metric such as: (1) total assets; (2) net capital under 17 CFR 240.15c3-1 (Exchange Act Rule 15c3-1); (3) the maximum value of total credits reported on the twelve most recently filed month-end FOCUS Reports; (4) whether the required reserve bank account deposit as a share of the reserve bank account balance prior to such deposit exceeds a certain percentage threshold (e.g., 5% or 10%); or (5) the average total credits per number of customer and PAB accounts? If so, explain why. If not, explain why not.

6. Should Rule 15c3-3 be modified to require all carrying broker-dealers to perform daily customer and PAB reserve computations? If so, explain why. If not, explain why not.

7. Should the six-month period to begin performing the daily customer and PAB reserve computations after having average total credits that equal or exceed the \$250 Million Threshold be modified? If so, explain why. If not, explain why not. For example, would six months be a sufficient time to implement the necessary changes to begin performing a daily computation? If so, explain why. If not, explain why not. Should the six-month period be lengthened or shortened? If so, explain why. If not, explain why not. For example, should the time period be 30 calendar days, 60 calendar days, three months, nine months or one year? If so, recommend a different time period and explain why it would be appropriate.

8. If a carrying broker-dealer falls below the \$250 Million Threshold,

reverts to a weekly computation after providing the 60-day prior notice, and subsequently exceeds the \$250 Million Threshold again, should the six-month period to begin performing the daily customer and PAB reserve computations be modified? If so, explain why. If not, explain why not. For example, would a carrying broker-dealer need six months to implement the changes necessary to perform the customer and PAB reserve computations daily after it exceeds the \$250 Million Threshold for a second or third time? If so, explain why. If not, explain why not. In this case, should the six-month period be shortened? If so, explain why. If not, explain why not. For example, should the time period for exceeding the \$250 Million Threshold for a second or subsequent time be 30 calendar days, 60 calendar days, or three months? If so, recommend a different time period and explain why it would be appropriate.

9. Should the requirement to provide a 60-day prior written notice to the carrying broker-dealer's designated examining authority before switching to weekly customer and PAB reserve computations be modified? If so, explain why. If not, explain why not. For example, should the time period be 30 days, 90 days or 180 days? If so, recommend a different time period and explain why it would be appropriate.

10. Should Rule 15c3-3 be modified to specifically address the situation where a carrying broker-dealer performing weekly customer and PAB reserve computations exceeds the proposed \$250 Million Threshold for a period of a month or two, but subsequently falls below the proposed \$250 Million Threshold during the six-month period to begin performing the customer and PAB reserve computations daily? If so, explain why. If not, explain why not. For example, if Rule 15c3-3 were to be modified in this way, should the carrying broker-dealer be permitted to continue to perform its customer and PAB reserve computations weekly, if it falls below the proposed \$250 Million Threshold during the six-month period? For example, if a carrying broker-dealer performing weekly computations exceeds the proposed \$250 Million Threshold in January and February, but falls below the proposed \$250 Million Threshold in March, April, May, and June, should the carrying broker-dealer be permitted to continue to perform weekly computations in July (as opposed to be required to perform daily computations beginning in July)? In such a case, should the carrying broker-dealer be required to give a written notice to its designated examining authority that it will continue to

perform weekly computations? If so, explain why. If not, explain why not.

11. Should Rule 15c3-3 be modified to require carrying broker-dealers to perform the customer and PAB reserve computations daily indefinitely once they exceed the \$250 Million Threshold for the first time (with no option to revert to weekly computations with a 60-day prior written notice)? If so, explain why. If not, explain why not.

12. Should Rule 15c3-3 be modified to require carrying broker-dealers to document in writing and preserve for three years under Exchange Act Rule 17a-4 the calculation of their average total credits?⁹¹ If so, explain why. If not, explain why not.

13. If the proposal was adopted substantially as proposed, how long would carrying broker-dealers need to prepare to come into compliance with the new requirements? Please explain. For example, would they need three, six, nine, twelve or some other number of months? What data points would carrying broker-dealers use to assess the timing? Are there any specific operational or technological issues that should be factored into a compliance date?

14. Would staggering the compliance dates over more than one calendar year help facilitate an orderly implementation of the proposal, if adopted substantially as proposed? For example, would it be appropriate for the compliance date to vary depending on the size of the average total credits reported by carrying broker-dealers, with firms having larger amounts of average total credits required to come into compliance sooner than firms with smaller amounts of average total credits? More generally, if staggering is appropriate, what would be an appropriate schedule of compliance dates for carrying broker-dealers with different amounts of average total credits? Please recommend different compliance dates for carrying broker-dealers with different amounts of average total credits and explain why they would be appropriate. Should the fact that some carrying broker-dealers already would be performing daily customer and PAB reserve computations factor into the compliance date? If so, explain why. If not, explain why not.

15. If the proposal was adopted substantially as proposed, would the six-month period to begin performing daily customer and PAB reserve computations after having average total credits that equal or exceed the \$250 Million Threshold provide adequate time for carrying broker-dealers to

⁹⁰ See Table 5 in section IV.B.2. of this release (detailing broker-dealer deposits and withdrawals as a share of reserve account balance for the year 2022).

⁹¹ See 17 CFR 240.17a-4.

implement the changes necessary to comply with the rule without the need for an additional delayed compliance date? If so, explain why. If not, explain why not. For example, would the six-month period be adequate if the date to begin performing the daily customer and PAB reserve computations fell near the end of the calendar year when carrying broker-dealers may refrain from implementing new information technology projects? If so, explain why. If not, explain why not.

III. Request for Comment—Reserve Account Requirements for Security-Based Swaps

A. Discussion

In 2019, the Commission adopted customer segregation requirements for broker-dealers and security-based swap dealers (“SBSDs”) with respect to customer money, securities, and property related to security-based swaps.⁹² These requirements were based in part on the requirements of Rules 15c3–3 and 15c3–3a discussed above.⁹³ Under the security-based swap segregation requirements, broker-dealers—including broker-dealers registered as SBSDs—are required to perform a separate weekly security-based swap customer reserve computation and have a separate security-based swap customer reserve account that must hold the net amount of cash owed to security-based swap customers.⁹⁴ Title 17 sections 240.18a–4 and 18a–4a (“Exchange Act Rules 18a–4 and 18a–4a”) impose analogous security-based swap customer reserve computation and deposit requirements on SBSDs that either are not registered as a broker-dealer or are registered as special class of broker-dealer known as an over-the-counter derivatives dealer (“OTC derivatives dealer”).⁹⁵ As discussed below, the proposed amendments would not alter these

existing segregation rules for security-based swap customers to require a daily (rather than weekly) computation and deposit.⁹⁶ However, the Commission seeks comment on these matters below.

The proposed amendments do not include such daily requirements because almost all carrying broker-dealers—including those also registered as SBSDs—that have credits related to the security-based swap activities of their security-based swap customers account for these credits in their customer reserve computation and in their customer reserve bank account.⁹⁷ Therefore, the proposed amendments to the customer reserve requirements of Rule 15c3–3 discussed above would apply to the security-based swap credits computed by these broker-dealers.⁹⁸ These carrying broker-dealers would not include any debit items related to security-based swap activities of their security-based swap customers in their customer reserve computation.⁹⁹ Consequently, amending Rule 15c3–3 to require a daily security-based swap customer reserve computation for broker-dealers, including those also registered as SBSDs, would have virtually no impact because the credits related to security-based swap activity for security-based swap customers generally are being included in the customer reserve computation. This would include the daily customer reserve computations of those carrying broker-dealers that exceed the proposed \$250 Million Threshold.

In addition, the SBSDs registered with the Commission that are not dually registered as broker-dealers (other than as OTC derivatives dealers) operate pursuant to an exemption from the Commission’s security-based swap segregation rule.¹⁰⁰ Under this exemption, they are not required to

perform a security-based swap customer reserve computation or have a security-based swap customer reserve account. In addition, these SBSDs are not members of SIPC.

B. Request for Comment

The Commission generally requests comments on whether the security-based swap customer reserve computation and deposit requirements should be daily (rather than weekly). In addition, the Commission requests comments on the following specific issues, with accompanying data and analysis:

16. Should Rule 15c3–3 be modified to require broker-dealers—including broker-dealers (other than OTC derivatives dealers) registered as SBSDs—to perform daily security-based swap customer reserve computations in addition to daily customer and PAB reserve computations? If so, explain why. If not, explain why not.

17. Should the Commission amend Exchange Act Rules 18a–4 and 18a–4a to require SBSDs that are not registered as broker-dealers (other than as OTC derivatives dealers) to perform daily security-based swap customer reserve computations? If so, explain why. If not, explain why not.

IV. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects, including the benefits and costs, of the proposed amendments. Section 3(f) of the Exchange Act provides that when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.¹⁰¹ Section 23(a)(2) of the Exchange Act also requires the Commission to consider the effect that the rules and rule amendments would have on competition, and it prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.¹⁰² The analysis below addresses the likely economic effects of the proposed amendments, including the anticipated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential

⁹² *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers*, Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43930–43 (Aug. 22, 2019) (“SBS Segregation Adopting Release”).

⁹³ *Id.* See also sections I.B.1. and I.B.2. of this release (discussing the requirements of Rules 15c3–3 and 15c3–3a).

⁹⁴ See 17 CFR 240.15c3–3(p); 17 CFR 240.15c3–3b.

⁹⁵ See 17 CFR 240.18a–4; 17 CFR 240.18a–4a. OTC derivatives dealers are limited purpose broker-dealers that are authorized to trade in OTC derivatives (including a broader range of derivatives than security-based swaps) and to use models to calculate net capital. See 17 CFR 240.3b–12 (defining the term “OTC derivatives dealer”); *OTC Derivatives Dealers*, Exchange Act Release No. 40594 (Oct. 23, 1998), 63 FR 59362 (Nov. 3, 1998). OTC derivatives dealers are not members of SIPC.

⁹⁶ The Commission proposed a daily computation requirement for security-based swap customers. See SBS Segregation Adopting Release, 84 FR at 43940. In response to comment, the Commission adopted a weekly security-based swap customer reserve requirement in light of the increased operational burdens for broker-dealers and SBSDs as compared to a weekly computation. *Id.*

⁹⁷ This is based on FOCUS Report data for calendar year 2022. The Commission notes that staff has stated its views in Question 1 of *Responses to Frequently Asked Questions Regarding Financial Responsibility Requirements as Applied to Security-Based Swap Activities of Broker-Dealers and Security-Based Swap Dealers* (Oct. 8, 2021), available at <https://www.sec.gov/tm/faqs-financial-responsibility-req-applied-sbs> (“SBS FAQ 1”). Based on FOCUS Report data for calendar year 2022, only one broker-dealer currently performs a separate security-based swap customer reserve computation.

⁹⁸ See section II.A.1. of this release (discussing the proposed amendments).

⁹⁹ See SBS FAQ 1 for staff views.

¹⁰⁰ See 17 CFR 240.18a–4(f).

¹⁰¹ See 15 U.S.C. 78c(f).

¹⁰² See 15 U.S.C. 78w(a)(2).

economic effects of certain alternatives to the approaches taken in this proposal.

As part of their business, carrying broker-dealers regularly receive cash related to customers' and PAB account holders' securities transactions, such as cash realized from sales of securities. While it is common that customers' and PAB account holders' cash is quickly re-invested or swept out to a bank account or money market fund by the customer or PAB account holder, it is also common for this cash to remain undeployed for or on behalf of customers and PAB account holders for several days or longer prior to the next required customer and PAB reserve computations and deposits into the customer and PAB reserve bank accounts.¹⁰³

Currently, the required balances in customer and PAB reserve bank accounts (net cash owed to customers or PAB account holders) are required to be calculated weekly, and the resulting amount must be held in the customer and PAB reserve bank accounts until the date of next required deposit.¹⁰⁴ However, the value of the net cash owed to customers or PAB account holders may change daily due to customers' and PAB account holders' transactions and re-deployment of undeployed funds. On a weekly basis, this could result in a large intra-week mismatch between the customer or PAB reserve bank account balances and actual net cash owed to customers or PAB account holders. This intra-week mismatch introduces several potential risks that are currently not internalized by carrying broker-dealers.

First, the mismatch between the calculated and the actual amounts of net cash owed to customers and PAB account holders introduces a risk to other SIPC members. More specifically, if a liquidation of a carrying broker-dealer with a mismatch of cash in its customer and PAB reserve bank accounts is carried out under SIPA, the SIPC Fund balance would be used if there are not enough assets in the broker-dealer's estate to cover the difference between the net cash owed to customers and the amount in the reserve bank account,¹⁰⁵ which may trigger a

subsequent increase in contributions from other SIPC members. This risk may be exacerbated for carrying broker-dealers experiencing large aggregate intra-week mismatches. As a result, the SIPC Fund would be at a higher risk of depletion. For example, as discussed in section IV.B.2. below, mismatches are common among broker-dealers of all sizes (as measured by average total credits). The largest carrying broker-dealers with average total credits of at least \$500 billion had mismatches of between 10 and 18 percent during 2022.¹⁰⁶

Second, this mismatch introduces a risk to customers and PAB account holders of carrying broker-dealers. To the extent that there is mismatch of funds in the customer or PAB reserve bank account, a failure of a carrying broker-dealer would prevent its customers or PAB account holders from promptly receiving the whole amount of cash owed to them. In this scenario, the funds owed to customers or PAB account holders may be tied up in liquidation proceedings and these customers or PAB account holders would have to wait to receive their funds back until the broker-dealer liquidation process is carried out under SIPA, which may take a significant amount of time. In addition, customers and PAB account holders may not receive their funds in full if the liquidation proceedings do not result in a full recovery of funds owed to customers and PAB account holders. This risk may be exacerbated for potential failures of carrying broker-dealers with large amounts of customer or PAB reserve bank account balances, such as when these carrying broker-dealers experience large aggregate intra-week mismatches between the reserve bank account balances and actual net cash owed to customers or PAB account holders. Under perfect information, investors would choose their carrying broker-dealer in part based on the risk of failure and would continue to monitor the carrying broker-dealer for risk of failure. However, monitoring

costs and other frictions may prevent this.

The proposed daily customer and PAB reserve computations for carrying broker-dealers with substantial amounts of total credits is aimed to address these risks and is expected to benefit customers, PAB account holders, and other stakeholders of the affected carrying broker-dealers by more dynamically matching the net cash owed to customers or PAB account holders and the customer and PAB reserve bank account balances. More specifically, the daily customer and PAB reserve computations would safeguard customers and PAB account holders of the affected carrying broker-dealers by lessening the potential for large mismatches to build over time, and thereby increasing the likelihood that they are made whole even if a carrying broker-dealer fails. Daily computations would also decrease the risk that other stakeholders, such as contributors to the SIPC Fund, would need to provide additional resources (e.g., in the form of increased assessments) to address a failure of a carrying broker-dealer.

The proposed amendments may result in increased compliance costs for the affected carrying broker-dealers. To the extent that each customer or PAB reserve computation takes a significant amount of time or involves manual processes, affected carrying broker-dealers would experience a one-time set up cost related to switching to a daily computation, as well as an increase in ongoing costs related to more frequent computations. These costs, like the aforementioned benefits, may ultimately be passed through to customers and PAB account holders of the affected carrying broker-dealers.

Many of the benefits and costs discussed below are impracticable to quantify. For example, the Commission lacks data that would help it predict how enhanced customer protection related to daily customer and PAB reserve computations would affect customer and PAB account holders' activities in the accounts maintained by the affected carrying broker-dealers and whether customers and PAB account holders of non-affected carrying broker-dealers would shift their capital to the affected carrying broker-dealers due to such increased protections; data that would help the Commission estimate how carrying broker-dealers near the proposed \$250 Million Threshold may adjust their business activities as a result of the proposed changes; and data on the complexity of customers' and PAB account holders' activities for different carrying broker-dealers that

¹⁰³ See section I.C. of this release (discussing the risk of a mismatch of funds owed and funds reserved under Rule 15c3-3).

¹⁰⁴ See section I.B.1. and 2. of this release (discussing customer protection requirements of Rule 15c3-3 for customers and PAB account holders).

¹⁰⁵ See section I.B.3. of this release (discussing broker-dealer liquidations and SIPA, including the funding and balance of the SIPC Fund). For an example of a customer reserve bank account mismatch, one carrying broker-dealer had a deficit in its customer reserve bank account equal to \$5 billion, yet the level of the SIPC Fund at the time

was at \$2 billion. See Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp., Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 78141 (June 23, 2016).

¹⁰⁶ Based on FOCUS Report data for 2022. The mismatch is calculated as the amount deposited (FOCUS Report Line 4520) relative to the reserve account balance (Line 4530). These data are discussed in detail in section IV.B.2 of this release, see Table 5 in that section and related discussion.

would help the Commission estimate the potential costs for various groups of the affected carrying broker-dealers. While the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. The Commission seeks comment on all aspects of the economic analysis, especially any data or information that would enable a quantification of the proposal's economic effects.

B. Baseline

1. Regulatory Baseline

a. Rule 15c3-3

Carrying broker-dealers are broker-dealers that maintain custody of customer securities and cash. Rule 15c3-3, known as the broker-dealer customer protection rule, is designed to give specific protection to customer funds and securities. For example, a broker-dealer is "virtually" precluded from using customer funds to buy securities for its own account.¹⁰⁷

The current rule specifies that a carrying broker-dealer must undertake two primary steps to safeguard these customer assets. First, carrying broker-dealers are required to maintain physical possession or control over customers' fully paid and excess margin securities.¹⁰⁸ Second, a carrying broker-dealer must maintain a reserve of funds and/or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers. The account must be a customer reserve bank account. The amount of net cash owed to customers is computed weekly as of the close of the last business day of the week pursuant to the customer reserve computation.¹⁰⁹ If credit items exceed debit items, the net amount must be on deposit in the customer reserve bank account in the form of cash and/or qualified securities.¹¹⁰ A carrying broker-dealer also is required to make and maintain a record of each computation.¹¹¹

¹⁰⁷ See section I.B.1. of this release (describing the purposes of Rule 15c3-3).

¹⁰⁸ See section I.B.1. of this release (describing possession and control requirements for customers' securities).

¹⁰⁹ Some carrying broker-dealers choose to perform a daily computation. See 17 CFR 240.15c3-3(e)(3)(iv). Further, the rule permits carrying broker-dealers in certain limited circumstances to perform a monthly computation. See 17 CFR 240.15c3-3(e)(3)(i). See also section I.B.1. of this release (describing the customer reserve bank account and customer reserve computation).

¹¹⁰ 17 CFR 240.15c3-3(e). See also section I.B.1. of this release (describing the customer reserve bank account and customer reserve computation).

¹¹¹ See 17 CFR 240.15c3-3(e)(3)(v). Each record must be preserved in accordance with Rule 17a-4. *Id.*

Carrying broker-dealers also may carry accounts that hold proprietary securities and cash of other broker-dealers, known as PAB accounts.¹¹² Broker-dealers are not within the definition of "customer" for purposes of Rule 15c3-3. The definition of "customer" in SIPA, however, is broader than the definition in Rule 15c3-3 in that the SIPA definition includes broker-dealers. As discussed in more detail in section I.B.3. of this release, broker-dealers—as customers under SIPA—have the right to share equally with other customers in the customer property in a SIPA liquidation in the event that there is a shortfall in the amount the broker-dealer owes its customers. Because broker-dealers are entitled to a *pro rata* share of customer property,¹¹³ Rules 15c3-3 and 15c3-3a require carrying broker-dealers to: (1) perform a PAB reserve computation in addition to the customer reserve computation;¹¹⁴ (2) establish and fund their PAB reserve bank account; and (3) obtain and maintain physical possession or control of non-margin securities carried for a PAB account holder.¹¹⁵

b. SIPA and the SIPC Fund

As described in section I.B.3. of this release, SIPA established SIPC and directed SIPC to establish the SIPC Fund.¹¹⁶ At the end of 2022, SIPC reported 3,396 members.¹¹⁷ The SIPC Fund totaled approximately \$4.05 billion as of December 31, 2022, and currently the objective is to build it to a level of \$5 billion. To date, SIPC has carried out 330 liquidations since its inception with approximately \$142 billion in assets distributed to customers.¹¹⁸ Of that, about \$141.2 billion came from debtors' estates (*i.e.*, SIPC broker-dealer members' estates), while \$917 million came from the SIPC Fund.¹¹⁹

¹¹² See section I.B.2. of this release (describing Rule 15c3-3 and PAB accounts).

¹¹³ See section I.B.3. of this release (describing broker-dealer liquidations and SIPA).

¹¹⁴ See section I.B.1. of this release (describing Rule 15c3-3 and customer accounts).

¹¹⁵ See section I.B.2. of this release (describing Rule 15c3-3 and PAB accounts).

¹¹⁶ See 15 U.S.C. 78ccc(a)(1) and 78ddd(a)(1).

¹¹⁷ See 2022 SIPC Annual Report, Table 2, at 10.

¹¹⁸ As of the end of 2022. See section I.B.3. of this release, describing broker-dealer liquidations and SIPA. The volume of proceedings was highest in the 1970s (15 per year), while between 1980 and 2003 the number averaged about seven per year. Since 2003 the average has been one per year (with the highest number, five, occurring in 2008, while there were 10 years with none). See 2022 SIPC Annual Report, Figure 1, at 8.

¹¹⁹ See 2022 SIPC Annual Report at 8-9, for the statistics in this paragraph. SIPC refers to distributions to customers as "advances," though the 2022 SIPC Annual Report does not detail the timing of those advances in the 330 proceedings.

c. Reserve Account Requirement for Security-Based Swaps

In 2019, the Commission adopted customer segregation requirements for broker-dealers and SBSDs with respect to customer money, securities, and property related to security-based swaps.¹²⁰ These requirements were based in part on the requirements of Rules 15c3-3 and 15c3-3a discussed above.¹²¹ Under these requirements, broker-dealers (including broker-dealers that are also SBSDs) are required to perform a separate weekly security-based swap customer reserve computation and have a separate security-based swap customer reserve account that must hold the net amount of cash owed to security-based swap customers.¹²²

2. Affected Broker-Dealers

Table 2 presents the universe of broker-dealers by presence of carrying activities.¹²³ As of December 2022, 156 broker-dealers identified in Line 40 of the FOCUS Report that they carry their own customer accounts. Among these, 65 reported having only customer credits, 66 reported having both customer and PAB credits, none reported having only PAB credits,¹²⁴ and 9 broker-dealers reported having no customer credits or debits. Further, 16 broker-dealers reported having exemptions from the requirements of Rule 15c3-3, including performing a customer reserve computation.¹²⁵ In

¹²⁰ See SBS Segregation Adopting Release. See also section III. of this release (discussing reserve account requirements for security-based swaps).

¹²¹ *Id.* See also sections I.B.1. and I.B.2. of this release (discussing the requirements of Rules 15c3-3 and 15c3-3a).

¹²² See 17 CFR 240.15c3-3(p); 17 CFR 240.15c3-3b. See also section III. of this release (discussing reserve account requirements for security-based swaps, and SBS FAQ 1 for staff views). SBSDs that are not broker-dealers (other than OTC derivatives dealers) are subject to the segregation requirements of Exchange Act Rules 18a-4 and 18a-4a.

¹²³ Based on monthly FOCUS Report data for the reporting year 2022. The Commission assumes that broker-dealers that did not file FOCUS Reports for the last month of 2022 are no longer in business.

¹²⁴ PAB account holders are not considered customers under 17 CFR 240.15c3-3(a)(1). See section I.B.2. of this release (describing Rule 15c3-3 and proprietary accounts of broker-dealers).

¹²⁵ There are three exemptions to Rule 15c3-3, each related to the procedure a broker-dealer follows when they receive customer funds and securities. The first exemption is for broker-dealers that partake in limited mutual fund and insurance-related business. The exemption allows such firms to briefly handle customer funds, but not maintain indefinite custody of those funds or securities. The second exemption applies to broker-dealers that clear their transactions on what is known as a "receive versus payment/delivery versus payment (RVP/DVP) basis." In an RVP/DVP settlement, a broker-dealer executes simultaneous exchanges of an equal value of funds for securities. As such, the

Continued

addition, 31 broker-dealers that did not identify themselves as those that carry their own customer accounts in Line 40 of the FOCUS Report reported customer and/or PAB credits in their customer or PAB reserve computations. Among these, four broker-dealers had both customer and PAB credits, 26 broker-dealers had customer credits only, and

one broker-dealer had PAB account credits only.

When the Commission computes average total credits using data for January 2022 through December 2022, the Commission estimates that there are 187 broker-dealers (“carrying broker-dealers”) that currently fall within the scope of the Rule 15c3–3 (though of this

group, 25 carrying broker-dealers reported zero customer or PAB credits in 2022). In aggregate, these carrying broker-dealers hold approximately 87 percent of all broker-dealer assets,¹²⁶ and report approximately \$1.2 trillion in total credits and approximately \$0.92 trillion in average monthly total debits, as of December 2022.¹²⁷

TABLE 1—BROKER-DEALERS BY CARRYING ACTIVITY, 2022^a

Broker-dealer type	Number	Total assets, \$B	Total credits, \$B		Total debits, \$B	
			Monthly average	Year-end	Monthly average	Year-end
<i>Carrying its own customer accounts:</i>	156	4,487.7	1,306.9	1,177.0	1,024.3	913.6
—with positive customer and PAB credits	66	3,982.3	1,261.2	1,138.5	982.8	879.4
—with positive customer credits only	65	446.8	45.7	38.5	41.5	34.3
—with zero reported credits	9	54.5	0	0	0	0
—with reporting exemptions	16	4.1	.....	.....	.....	.....
<i>Not carrying its own customer accounts:</i>	31	58.0	22.6	20.5	4.2	3.8
—with positive customer and PAB credits	4	8.0	0.3	0.1	0.3	0.1
—with positive customer credits only	26	49.7	22.3	20.4	3.8	3.7
—with positive PAB credits only	1	0.4	0.01	0.01	0.02	0.01
<i>Without any carrying activities</i>	3,411	694.0	.....	.....	.....	.....
Total	3,598	5,239.7	1,329.5	1,197.5	1,028.5	917.4

^a Data are for calendar year 2022. The Commission uses monthly FOCUS Reports to calculate average monthly total credits and total debits. For each broker-dealer, Total Credits are calculated as the sum of the average monthly amount of customer credits reported on Line 4430 and the average monthly amount of PAB credits reported on Line 2170. Similarly, for each broker-dealer, Total Debits are calculated as the sum of the average monthly amount of customer debits reported on Line 4472 and the average monthly amount of PAB debits reported on Line 2230.

Table 3 displays the broker-dealers that reported positive customer or PAB

credits in 2022 into groups based on the size of their average monthly total

customer and PAB credits (averaged over January 2022 to December 2022).¹²⁸

TABLE 2—CARRYING BROKER-DEALERS BY SIZE OF AVERAGE TOTAL CREDITS, 2022

	Number	Total assets (\$B)	Total customer credits, \$MM			Total PAB credits, \$MM			Total credits, \$MM	
			Number	Mean	Median	Number	Mean	Median	Mean	Median
>\$0–100MM	81	127.1	81	14.8	2.1	18	0.4	0	15.3	2.4
\$100–250MM	18	101	18	133.3	120.3	12	4.3	0	137.6	128.6
\$250–500MM	8	148.1	8	374.7	394.9	3	8.6	0	383.3	401.1
\$500MM–1B	9	206.6	9	593.8	566.5	7	98.0	29.6	691.8	667.6
\$1–5B	18	352.5	18	2056.7	1868.1	16	127.5	2.9	2184.2	1871.4
\$5–10B	7	189.7	7	5779.7	5352.5	7	820.0	62.3	6599.6	5892.1
≥\$10B	21	3362.1	21	51312.0	23941.5	19	7307.7	84.5	58619.8	29261.2
Total^a	162	4,487.1	162	7,203.5	84.7	82	1,003.5	0.0	8,207.0	95.1

^a Table excludes carrying broker-dealers with zero reported credits in 2022.

The proposed daily computation would apply only to carrying broker-dealers whose average total credits are above the proposed \$250 Million Threshold. Therefore, the Commission estimates that, based on data for January 2022 through December 2022, the scope

of affected entities was 63 carrying broker-dealers, which held 86.4 percent of aggregate total credits of all carrying broker-dealers.

The number of affected carrying broker-dealers may vary month to month since a 12-month rolling average

is used for the proposed \$250 Million Threshold. To provide information on how the number of entities may thus vary over time, Figure 1 displays the number of affected broker-dealers for a sequence of 12-month rolling averages

broker-dealer does not end up holding any residual customer funds or securities. The third exemption is also available to broker-dealers that temporarily handle customer funds. This broker-dealer, called an “introducing broker,” establishes accounts in the name of its customers at another broker-dealer, a “clearing broker.” The clearing broker then maintains custody of those customers’ cash and

securities in those accounts on a fully disclosed basis. See 17 CFR 240.15c3–3(k).

¹²⁶ Total assets are reported on Line 940 of the FOCUS Report.

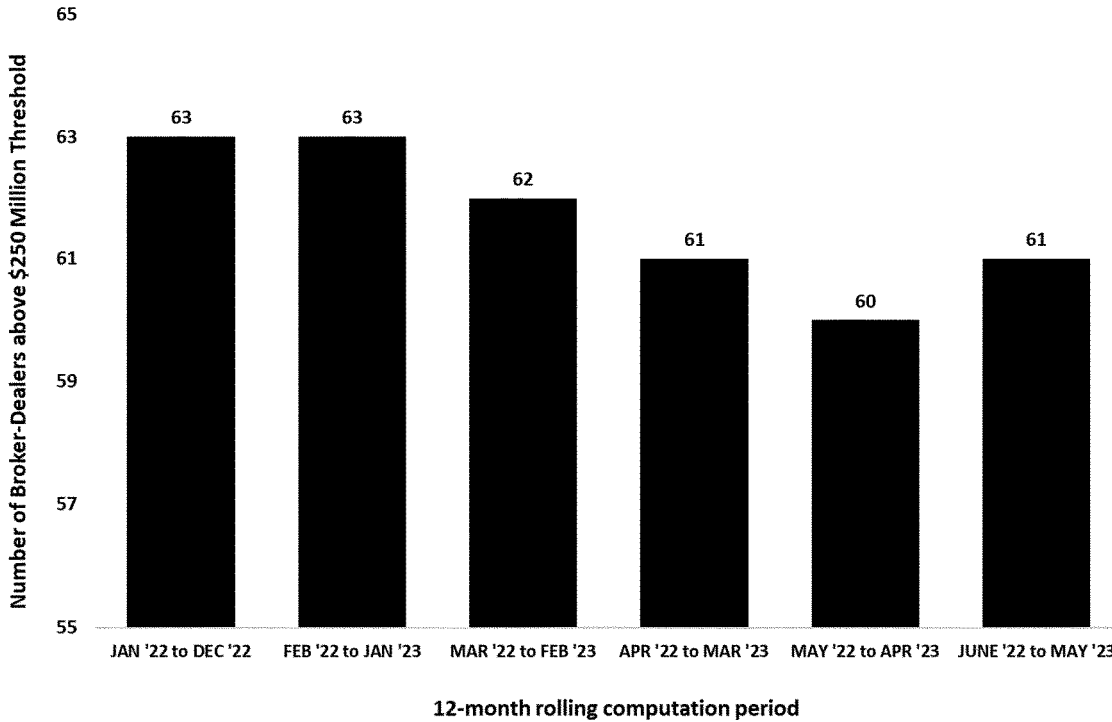
¹²⁷ The Commission uses monthly FOCUS Reports to calculate total credits and total debits. For each broker-dealer, Total Credits are calculated as the sum of customer credits reported on Line 4430 and the PAB credits reported on Line 2170.

Similarly, for each broker-dealer, Total Debits are calculated as the sum of the customer debits reported on Line 4472 and the PAB debits reported on Line 2230.

¹²⁸ The grouping is based on the average monthly amount of customer credits reported on Line 4430 and the average monthly amount of PAB credits reported on Line 2170.

beginning with January 2022 and extending through May 2023.¹²⁹

Figure 1. Number of Affected Broker-Dealers under 12-Month Rolling Average, Over the Period from January 2022 – May 2023



As shown in Figure 1, the number of affected carrying broker-dealers varied monthly from 60 to 63 over the period from January 2022 through May 2023. There was little variation, however, in the identity of the affected carrying broker-dealers. The same fifty-nine carrying broker-dealers met the

threshold in each month, and from one to four additional broker-dealers met the threshold in any given month. In total, over this period, 63 different carrying broker dealers would have been affected.¹³⁰

With respect to the frequency of computation, based on the January 2022

to December 2022 period (12-month period), Table 4 displays the number of broker-dealers performing their computations daily, weekly, and monthly in each size category for average total credits.¹³¹

TABLE 3—RESERVE FORMULA COMPUTATION FREQUENCY, 2022

Average total credits	Number	Customer reserve formula				PAB reserve formula			
		Number	Daily	Weekly	Monthly	Number	Daily	Weekly	Monthly
>\$0–100MM	81	81	1	67	12	18	0	17	1
\$100–250MM	18	18	0	18	0	12	0	12	0
\$250–500MM	8	8	0	8	0	3	0	3	0
\$500MM–1B	9	9	0	9	0	7	0	7	0
\$1–5B	18	18	1	17	0	16	1	15	0
\$5–10B	7	7	0	7	0	7	0	7	0
≥10B	21	21	10	11	0	19	9	10	0
Total	162	162	12	137	12	82	10	71	1

¹²⁹ Figure created from monthly FOCUS Reports, from January 2022 through May 2023. The first 12-month computation period is January 2022 to December 2022, the second period is February 2022 through January 2023, and so on. The total number of broker-dealers that reported positive total credits in each of the six rolling periods shown in Figure 1 equaled 162, 162, 161, 161, 162 and 162, respectively.

¹³⁰ Only in one case did a carrying broker-dealer within the top-60 fall below the \$250 Million Threshold from one period to the next (leading to the decline from 63 to 62 carrying broker-dealers).

¹³¹ Data from monthly FOCUS Reports filed for the 2022 calendar year. A small number of broker-dealers did not identify any customer or PAB reserve computation frequency (for example, for broker-dealers reporting positive credits in

customer accounts, one failed to report reporting frequency in their FOCUS Report). Therefore, the total number of carrying broker-dealers exceeds the sum of the number of broker-dealers who identified a daily, weekly, or monthly computation frequency. Of the carrying broker-dealers that reported a filing frequency in 2022 calendar year, the reported frequency (daily, weekly, or monthly) remained the same in each reported month.

As shown in Table 4, out of 162 broker-dealers that reported the frequency of their customer reserve formula computations, there were 12 carrying broker-dealers that performed the customer reserve computation daily, among which 10 also performed the PAB reserve computation daily and two which do not report carrying PAB accounts. Among carrying broker-dealers performing the customer reserve computation daily, 11 had total credits above the proposed \$250 Million Threshold. These 11 carrying broker-dealers accounted for 64 percent of the total amount of average total credits among all carrying-broker dealers with positive customer or PAB credits reported in 2022.¹³² All the carrying broker-dealers performing the PAB reserve computation daily had total credits above the proposed \$250 Million Threshold.¹³³

Based on the January 2022 to December 2022 period, there were 52 carrying broker-dealers with average total credits equal to \$250 million or above performing the customer reserve computation weekly and there were no carrying broker-dealers with average total credits equal to \$250 million or above performing the customer reserve

computation monthly. Among the 52 carrying broker-dealers performing weekly customer reserve computation, there were 42 carrying broker-dealers that performed the PAB reserve computation weekly and there were no carrying broker-dealers with average total credits equal to \$250 million or above that performed the PAB reserve computation monthly. Based on the data for 2022, the Commission estimates that 52 carrying broker-dealers would be affected by the proposal.

Table 5 below shows the distribution of deposits required to be put into the customer and PAB reserve bank accounts or permitted withdrawals after the reserve computation performed at the end of the reporting period relative to the initial reserve bank account balance.¹³⁴ These metrics provide a picture of the “mismatch” that occurs with respect to customer and PAB accounts. The column “Average Mismatch” is calculated as the average of deposits (averaged over 2022) for each broker-dealer relative to the average balance in the reserve account (customer or PAB account).

With respect to customer reserve accounts, shown in Panel A, the largest average mismatches occurred for broker-dealers over the \$250 Million

Threshold, with the largest occurring for carrying broker-dealers within the \$5 to \$10 billion range. For the case of the maximum mismatch during the year, there appears to be less of a correlation with carrying broker-dealer size.¹³⁵ For PAB reserve accounts, shown in Panel B, the largest average mismatch and the maximum mismatch occurred for the groups of carrying broker-dealers over \$250 million in average total credits (it is also the case that the total amount of PAB accounts are concentrated among those carrying broker-dealers).

Panel C and D of Table 5 display the average mismatch and maximum mismatch metrics comparing the large carrying broker-dealers (over \$1 billion in average total credits) that currently compute their reserve accounts daily versus those that do so weekly.¹³⁶ With respect to customer reserve accounts (Panel C), carrying broker-dealers that compute daily have larger average reserve balances and deposits, and lower average and maximum mismatches than those that compute weekly.¹³⁷

For PAB reserve accounts (Panel D), the average or maximum mismatch do not appear as correlated with daily versus weekly filing.¹³⁸

TABLE 4—BROKER-DEALER DEPOSITS AND WITHDRAWALS AS A SHARE OF RESERVE ACCOUNT BALANCE, 2022

Broker-dealer group	Number	Average reserve balance MM	Average deposit MM	Average withdrawal MM	Average mismatch %	Maximum mismatch %
Panel A: Customer Reserve Accounts						
>\$0–100MM	81	\$9.5	\$0.7	–\$4.1	6.1	25.2
\$100–250MM	18	52.7	1.9	–16.2	5.7	27.1
\$250–500MM	8	180.8	9.9	–16.0	6.1	20.9
\$500MM–1B	9	124.2	7.7	–32.2	18.2	35.9
\$1–5B	18	732	35.8	–61.4	5.4	22.5
\$5–10B	7	1,147.2	234	–122.4	31.9	57.4
≥10B	21	14,150.6	542.3	–841.6	7.9	25.3
Panel B: PAB Reserve Accounts						
>\$0–100 MM	18	1.2	0.03	–0.3	2.9	18.7
\$100–250 MM	12	5.3	0.3	–2.9	2.3	10.4
\$250–500 MM	3	19.9	1.3	–5.3	5.2	24.7
\$500MM–1 B	7	106.5	4.5	–27.3	11.4	41.1
\$1–5 B	16	27.9	5.5	–20.4	7.7	44
\$5–10 B	7	184.5	56.2	–108.6	10.4	39
≥10 B	19	749.1	127.4	–279.9	7.6	29.4

¹³² Calculated from monthly FOCUS Reports for 2022.

¹³³ The broker-dealers identified as filing daily in the January 2022 to December 2022 sample were the same broker-dealers identified in the April 2022 to May 2023 sample (for both customer and PAB accounts).

¹³⁴ Calculated from monthly FOCUS Reports for 2022. The Commission isolated deposits (equal to or greater than zero) from any month (Line 4520), relative to the reserve account balance, (Line 4530). For PAB reserve bank accounts, deposits and

amount in reserve account are FOCUS Lines 2290 and 2300, respectively. Note, the Commission also recalculated by defining the deposit category as only values greater than zero, but the average mismatch did not change very much for each category, nor did the pattern seen in the table.

¹³⁵ For the maximum mismatch, the Commission isolated the largest monthly deposit amount in 2022 (Line 4520), relative to the reserve account balance for that month (Line 4530). The same was done for PAB reserve accounts (FOCUS Lines 2290 and 2300, respectively).

¹³⁶ As noted above, the number and identity of the daily filers are consistent from December 2022 through May 2023. See *supra* note 133.

¹³⁷ Panel C omits the one carrying broker-dealer below the \$250 Million Threshold that computed their customer reserve account daily in 2022.

¹³⁸ The patterns and inference drawn from Table 5 are similar if constructed with the rolling sample period from June 2022 to May 2023. For example, for the daily filers shown in Panel C, the average mismatch is 4.9 percent, while for weekly filers, the average mismatch is 14.6 percent.

TABLE 4—BROKER-DEALER DEPOSITS AND WITHDRAWALS AS A SHARE OF RESERVE ACCOUNT BALANCE, 2022—
Continued

Broker-dealer group	Number	Average reserve balance MM	Average deposit MM	Average withdrawal MM	Average mismatch %	Maximum mismatch %
Panel C: Customer Reserve Accounts						
All (weekly and daily):						
≥1B	46	6,921.1	297.2	– 441.1	10.7	29.2
Daily:						
≥1B	11	13,324.2	482.3	– 1,227.8	5.2	22.1
Weekly:						
≥1B	35	4,908.7	239	– 178.9	12.4	31.5
Panel D: PAB Reserve Accounts						
All (weekly and daily):						
≥1B	42	380.3	69.1	– 159.1	8.1	36.6
Daily:						
≥1B	10	1,153.7	216.8	– 356.5	8.9	33.4
Weekly:						
≥1B	32	138.5	22.9	– 74.5	7.9	37.4

C. Benefits and Costs of the Proposed Amendments

Customers and PAB account holders of the affected carrying broker-dealers are expected to benefit from the proposed daily customer and PAB reserve computations. As reflected in the discussion in section I.C of this release noting the large amounts of deposits carrying broker-dealers may receive, and as evidenced from the information in Table 5, a weekly customer and PAB reserve computation can result in a carrying broker-dealer owing a net amount of cash to customers or PAB account holders for a number of days that is greater than the current amounts deposited into the customer and PAB reserve bank accounts. Hence, if a carrying broker-dealer fails before the next reserve account computation and the reserve bank account balances do not represent the actual net amount of cash owed to customers or PAB account holders, these customers and PAB account holders may be at risk of not recovering their funds from the carrying broker-dealer or having it tied up in a liquidation proceeding. Performing daily customer and PAB reserve computations would likely decrease this risk.

Under the scenario where a carrying broker-dealer does not have sufficient funds to repay what it owes to customers or PAB account holders, SIPC likely would need to initiate a liquidation of the carrying broker-dealer under SIPA.¹³⁹ Although the SIPC Fund can be used to advance funds to

customers that are owed money, PAB account holders are not entitled to such advances; therefore, they may not receive the funds owed to them by a failed carrying broker-dealer as promptly as customers of such broker-dealer may. In addition, there is a limit on advances to customers in the amount of \$500,000 per customer (of which \$250,000 can be used to cover cash claims). If some customers are owed more than such limit, these customers would have to wait along with PAB account holders until a trustee is appointed who would consequently attempt to recover assets of the failed carrying broker-dealer via asset sales or other recovery methods. This recovery process may, in some cases, be lengthy.¹⁴⁰ In an extreme case, the recovery amounts the trustee is able to receive may still be insufficient to make all customers and PAB account holders whole, which means that these customers and PAB account holders have to absorb the loss.

Based on these various circumstances surrounding a failure of a carrying broker-dealer, from the customer's or PAB account holder's perspective, there are varying degrees of risk related to a potential failure of a carrying broker-dealer, depending on whether it has enough funds to make all customer and PAB account holders whole at the time of its failure. Therefore, maintaining levels of customer and PAB reserve bank account balances that more closely

represent the actual amounts of net cash owed to customers and PAB account holders would benefit these customers and PAB account holders by decreasing the risk of not completely recovering their funds from the carrying broker-dealer or having these funds tied up in a liquidation proceeding.¹⁴¹

In addition, performing daily customer and PAB reserve computations would benefit customers and PAB account holders of the affected carrying broker-dealers by acting as a prophylactic that reduces the risk of broker-dealers using customers' or PAB account holders' funds for other purposes that are not permissible under Rule 15c3–3, if the part of the net cash owed to customers or PAB account holders is comingled with other funds in a broker-dealer's operating account.¹⁴² When a carrying broker-

¹⁴¹ The Commission notes that, with daily computing, there will still be a mismatch between the actual net cash owed to customers and the reserve account balance because of the deposit timing delay, which is the morning of the second business day after the day of calculation. Should a carrying broker-dealer computing daily fail, and the amount of the mismatch is lower than in the case of a weekly computation, the customer may receive their funds more promptly from the carrying broker-dealer's available assets than in the case where mismatches are larger (which may imply a longer liquidation process), underscoring the potential benefit from daily computing. It is also a possibility, however, that daily computing may lead to a situation with large mismatches. If a carrying broker-dealer receives large customer deposits on consecutive days, given the two-day settlement period, any mismatch may persist over that period, and should the carrying broker-dealer fail, the benefits to customers of daily computation may be reduced.

¹⁴² The Commission notes that, with respect to each customer reserve computation required pursuant to Rule 15c3–3, a broker-dealer must not accept or use any of the amounts under items

¹³⁹ See section I.B.3 of this release (discussing broker-dealer liquidations and SIPA).

¹⁴⁰ For example, it has been the case that customers of a liquidated carrying broker-dealer have had to wait up to six months or more to access their assets during the liquidation period. See Michael P. Jamroz, *The Customer Protection Rule*, 57 Bus. Law. 1069 (May 2002), available at <https://www.jstor.org/stable/40688076>.

dealer experiences a large inflow of customer cash, reducing the time between that inflow and when the carrying broker-dealer performs its next customer and PAB reserve computations and funds its reserve accounts could reduce the risk that those funds may be inadvertently used for other purposes that may carry a risk to the customers and PAB account holders. Under the proposal, the affected carrying broker-dealers would not be able to do this, which would reduce the risk of reserve fund mismatches.

Other broker-dealers that are SIPC members may also benefit from the proposed daily computation of the customer and PAB reserve formulas. Specifically, if a failing carrying broker-dealer with a mismatch between the reserve bank account balances and actual cash owed to customers and PAB account holders is put into SIPC liquidation, SIPC may be required to use the SIPC Fund to advance money to customers from the SIPC Fund, reducing its balance and potentially depleting the SIPC Fund.¹⁴³ Consequently, a reduction in the SIPC Fund balance and/or SIPC's unrestricted net assets may trigger increased contributions from member broker-dealers, as displayed in Table 1 in section I.B.3. of this release, with more substantive balance reductions requiring larger increases in assessments of member broker-dealers, which may be passed onto investors. Therefore, the proposed daily computation would benefit SIPC member broker-dealers by reducing the risk of SIPC Fund depletion and a consequent increase in SIPC assessments.

The proposed daily computation would apply only to carrying broker-dealers whose average total credits exceed the \$250 Million Threshold. Given the information from the 12-month average based on the 2022 monthly FOCUS Reports as an example, the Commission estimates that 52 broker-dealers would be required to switch to a daily computation of the customer reserve formula and 42 broker-dealers would be required to switch to a daily computation of the PAB reserve

comprising total credits under the customer reserve formula except for the specified purposes indicated under items comprising total debits under the formula. See paragraph (e)(2) of Rule 15c3-3. 17 CFR 240.15c3-3(e)(2).

¹⁴³ The Commission notes that, while broker-dealers (which includes PAB account holders) are customers for the purposes of SIPA, they are not entitled to the advances from the SIPC Fund of up to \$500,000 (limited to \$250,000 for cash claims) allowed under SIPA to make up for potential shortfalls after the *pro rata* distribution of customer property. See 15 U.S.C. 78fff-3(a).

formula.¹⁴⁴ As shown in Table 5, carrying broker-dealers with average total credits above the proposed \$250 Million Threshold are more likely to experience larger mismatches and the dollar amounts underlying those mismatches are significantly larger.¹⁴⁵ And as shown in Panel C of Table 5, those carrying broker-dealers that compute daily tend to have smaller mismatches than those that compute weekly. Hence, the proposal may reduce the likelihood of mismatches, benefitting customers and PAB account holders of the affected carrying broker-dealers.

Further, in cases where carrying broker-dealers with greater amounts of total credits are more interdependent with other carrying broker-dealers than carrying broker-dealers with smaller amounts of total credits, having more large broker-dealers computing daily may benefit financial markets overall without imposing the costs of daily computation onto carrying broker-dealers that do not have significant amounts of total credits. To the extent that carrying broker-dealers above the threshold are more likely to have more PAB account holders (which include other broker-dealers) or PAB account holders with greater amounts of cash in their PAB accounts, the broker-dealers above the threshold may pose greater risk to other broker-dealers. As shown in Table 3, among the 63 carrying broker-dealers above the proposed \$250 Million Threshold, based on data for January 2022 through December 2022, approximately 82.5 percent carry PAB accounts while only approximately 26.6 percent of the unaffected broker-dealers carry PAB accounts.

That is, should a carrying broker-dealer fail and not have sufficient funds in its PAB reserve bank account to make whole its PAB account holders, a broker-dealer that is a PAB account holder of the failed carrying broker-dealer may consequently be exposed to financial stress, which could further propagate to its PAB account holders, and so on. This risk is exacerbated for PAB account holders because they are not entitled to advances from the SIPC Fund. In that way, a failure of one large carrying broker-dealer with a mismatched PAB reserve bank account may result in other carrying broker-dealers experiencing financial stress and increased risk of liquidation. In so far as a daily computation for carrying broker-dealers with total credits above the \$250 Million Threshold reduces the chance

¹⁴⁴ See Table 3.

¹⁴⁵ See discussion in section IV.B.2. of this release for more details on Table 5.

that a large carrying broker-dealer has mismatched funds in its PAB reserve bank account, the potential for stress propagation associated with a failure of a carrying broker-dealer could be reduced.

Affected broker-dealers may experience an increase in costs as a result of the proposed daily computation. The Commission expects these costs to be primarily related to the operational changes, staff increases, and upgrades required for daily computing and the costs related to the recordkeeping requirements. The Commission estimates that it takes a carrying broker-dealer between one to five hours per computation to prepare the records of the computations, or an average of 2.5 hours.¹⁴⁶ Given the 52 carrying broker-dealers that would be required to switch to a daily computation of the reserve formulas under the proposal, that implies an increase in the aggregate annual recordkeeping burden of approximately \$13 million.¹⁴⁷ To the extent that carrying broker-dealers with total credits above the \$250 Million Threshold may experience economies of scale and may have more sophisticated operational systems, with experienced and well-trained staff,¹⁴⁸ the increase in compliance costs may not be substantial. In addition, the 11 carrying broker-dealers that already perform such computations daily (as shown in Table 4, based on data for the period for January 2022 through December 2022) may not experience an increase in compliance costs.

However, to the extent that the affected carrying broker-dealers that are just above the threshold do not experience the same economies of scale as carrying broker-dealers that are well above the threshold, they may be disproportionately affected by the proposed requirement and the related costs. If these costs are significant, some carrying broker-dealers may decide to alter their business to fall below the threshold and avoid the costs related to performing the customer and PAB reserve computations daily. If so, the potential benefits of the proposal may be mitigated.

¹⁴⁶ See *infra* section V. of this release (discussing PRA).

¹⁴⁷ *Id.* The Commission assumed an hourly rate of \$295 per hour for a "financial reporting manager." That computes to a potential added cost of \$13,726,350 (\$295 × 46,530 hours) to the affected carrying broker-dealers.

¹⁴⁸ See related discussion in Stavros Gadinis, *The SEC and the Financial Industry: Evidence from Enforcement Against Broker-Dealers*, 67 Bus. Law. 679 (May 2012), available at <https://www.jstor.org/stable/2324001>.

Carrying broker-dealers just below or above the threshold may also experience uncertainty related to being scoped into compliance with the daily computation requirement and may experience costs related to this uncertainty. As displayed in Figure 1, some carrying broker-dealers are likely to drop below the \$250 Million Threshold, and then once again exceed the threshold in later months. The costs related to these fluctuations are uncertain, but are likely to add, for such carrying broker-dealers, to the cost estimates cited above (for example, if additional staff is needed by these carrying broker-dealers to monitor their customer reserve accounts more closely than firms well above the \$250 Million Threshold).

Finally, while switching back and forth between daily and weekly computations may tailor the compliance costs to the size of customer activity, these fluctuations may also be confusing for customers and PAB account holders of carrying broker-dealers who decide to switch. However, this potential cost or concern may be trivial as many customers may be unaware of, or unconcerned by, the switch.

D. Effects on Efficiency, Competition, and Capital Formation

The proposed amendments may affect competition among carrying broker-dealers. First, to the extent that compliance costs would be passed onto customers and PAB account holders, affected carrying broker-dealers that experience greater economies of scale may become more competitive than other affected carrying broker-dealers. Second, to the extent that customers of carrying broker-dealers value daily reserve computations more than the weekly computations, the affected carrying broker-dealers may become more competitive relative to the unaffected carrying broker-dealers. However, the Commission does not anticipate such an effect to be large. Given the fact eleven carrying broker-dealers already compute daily, if such a competitive advantage existed, and carrying broker-dealers performing weekly computations were losing customers, then more carrying broker-dealers would have likely already converted to daily computing.

The proposed amendments may increase liquidity in the securities markets, as they would promote confidence in the broker-dealer industry and result in an increase of customer and PAB account activities. As a consequence, market efficiency and capital formation in the underlying markets may increase. Under the baseline there is a greater chance of a

larger mismatch with weekly reserve computations than with daily reserve computations, suggesting a greater risk in doing business with a carrying broker-dealer that performs its customer and PAB reserve computations weekly. Also, to the extent that the mismatch reflects an overfunding, there may also be a greater cost to the carrying broker-dealer (and by extension its customers), since it ties up capital that the broker-dealer could have put to more productive use.

Therefore, should customers and PAB account holders have a concern over mismatch in reserve bank accounts and potential failures affect market participants' willingness to expose themselves to broker-dealers, there may be less capital committed to this market as otherwise. However, similar to the point above, if customers of carrying broker-dealers were aware and concerned of mismatches, the Commission might have already observed more carrying broker-dealers computing daily, in order to retain customers, than is currently the case under the baseline. Therefore, the Commission does not anticipate any effect on capital formation in this market to be significant.

In addition, in so far as capital loss could arise in times of market stress due to an increased likelihood of carrying broker-dealer failures, market participants may become concerned with the possibility of not getting their cash promptly or not getting paid in full, in an event of a carrying broker-dealer failure and reduce their exposure to broker-dealers. To the extent that the proposed daily computation requirement alleviates this concern, the risk of flight of capital from securities markets may decrease during stressed market conditions and capital inflow during normal market conditions may increase.

Finally, the proposed daily computation may benefit the affected carrying broker-dealers by increasing their operational efficiency. For example, in a scenario where customer reserve or PAB reserve accounts are over-funded, a carrying broker-dealer that performs a weekly computation cannot withdraw excess cash from the customer reserve bank account until the following reserve computation date, even if the value of the account exceeds the actual net cash owed to customers, exposing this carrying broker-dealer to operational inefficiency. A daily computation would permit the affected carrying broker-dealers to withdraw these excess funds in a timely manner and would allow them to manage their funds and operations more effectively.

In this context, daily computation implies that a carrying broker-dealer's capital commitments are more efficiently employed.

Since the proposed requirements do not impact the scope of information available to investors, the Commission does not anticipate effects on informational efficiency to be significant.

E. Reasonable Alternatives

1. Over-Funding of the Customer and PAB Reserve Bank Accounts

As an alternative to daily computation requirements, the Commission could require an over-funding approach which would apply to the customer and PAB reserve bank accounts. For example, carrying broker-dealers would perform the required reserve computations and deposits weekly and deposit a multiple of this amount (e.g., 105% or 110%) into the customer or PAB reserve bank account. Under this alternative approach, carrying broker-dealers would avoid an increase in compliance costs associated with a daily computation requirement (hence, this alternative would apply to carrying broker-dealers choosing weekly funding). Insofar as the compliance costs associated with the proposed daily computation would be passed onto customers and PAB account holders of the affected carrying broker-dealers, this alternative approach may be more beneficial for these customers and PAB account holders because it would not imply an operational change and compliance costs related to the customer and PAB reserve computation while offering extra protection for customers and PAB account holders.

However, under this alternative the carrying broker-dealer would need to fund the excess with its own cash, which could result in funding costs, decreased liquidity, and opportunity costs from not being able to deploy this cash in the firm's business. As a result, requiring carrying broker-dealers to place extra cash in a customer or PAB reserve bank account may result in an operational efficiency decrease and potential reduction of carrying broker-dealers' profits, which may be passed onto customers, PAB account holders, and other stakeholders. In addition, this approach may not account for the actual net cash owed to customers and PAB account holders, if reserve bank account mismatches exceed the buffer that this alternative would require.

2. A Threshold Based on a Different Metric

As an alternative, the Commission could set a threshold for compliance

with a daily computation requirement based on a different metric. For example, the Commission could set a threshold based on total assets of \$1 billion or net capital of \$50 million. A threshold based on such metrics may be more representative of the economies of scale that carrying broker-dealers experience and may better indicate a carrying broker-dealer's ability to comply with enhanced requirements without substantial increases in compliance costs that could ultimately be passed onto their customers.

Based on the monthly 2022 FOCUS Reports, the Commission estimates that under the alternative threshold of \$1 billion in total assets 80 broker-dealers would be required to perform the customer and PAB reserve computations daily. Of the 63 carrying broker-dealers that are at or above the \$250 Million Threshold for average total credits, three have total assets below \$1 billion, while 20 broker-dealers below the \$250 Million Threshold have total assets over \$1 billion.

With respect to a \$50 million net capital threshold, 104 broker-dealers would be required to perform the customer and PAB reserve computations daily. Of broker-dealers that are below \$250 Million Threshold for average total credits, 24 have net capital exceeding \$50 million, while of the group above \$250 Million Threshold for average total credits, three have net capital below \$50 million.

If the alternative states that the broker-dealer has over \$1 billion in total assets, or has over \$50 million net capital threshold, 105 broker-dealers would be required to perform the customer and PAB reserve computations daily.

A drawback to this alternative is that some large broker-dealers with minimal amounts of carrying activity would bear the added cost of switching to a daily computation. For example, the group of 20 carrying broker-dealers below the \$250 Million Threshold with \$1 billion in assets or more, had a combined total of average total credits of approximately \$1.5 billion as of the end of 2022. That amounted to only about 0.11 percent of average total credits for all broker-dealers for that year.¹⁴⁹

3. Daily Computation Requirement for All Carrying Broker-Dealers

As an alternative, the Commission could require the daily computation requirement to apply to all carrying

¹⁴⁹ The numbers for this alternative do not change much if the rolling average is computed using the June 2022 to May 2023 period. See Table 7 below in section IV.E.6 of this release for those numbers.

broker-dealers (a "zero" threshold). Under this alternative, a greater number of carrying broker-dealers would perform their customer and PAB reserve computations daily, which would benefit more customers and PAB account holders compared to the proposal. Specifically, under the zero threshold, 99 more carrying broker-dealers would experience the benefits and costs discussed in section IV.C. of this release (compared to the 63 affected based on the January 2022 to December 2022 period).

Further, to the degree that carrying broker-dealers with smaller amounts of total credits are interdependent with other broker-dealer to the same degree as carrying broker-dealers with larger amounts of total credits, the zero-threshold approach may benefit all PAB account holders equally and potentially reducing the systemic risk to a greater degree relative to the proposal. The amount of credits held in the PAB reserve bank accounts of the 52 broker-dealers (with PAB accounts) above the \$250 Million Threshold makes up approximately 99 percent of the total amount held in PAB reserve bank accounts (of the 82 broker-dealers that reported carrying PAB accounts in 2022).¹⁵⁰

In particular, in so far as a daily computation for all carrying broker-dealers reduces the chance that any carrying broker-dealer has funds in its PAB reserve bank account that are less than the net amount of cash owed to PAB account holders, the potential for stress propagation associated with a failure of a carrying broker-dealer could be reduced.

However, this alternative would impose compliance costs on a greater number of carrying broker-dealers, which could be passed onto customers and PAB account holders. In addition, customer protection benefits may be outweighed by the reduction in operational efficiency of carrying broker-dealers with little customer and PAB account activity that may arise from disproportional dedication of resources towards a de minimus business activity. Relatedly, this alternative may also impose significant economic impact on small businesses.¹⁵¹

4. A Higher or Lower Threshold for Daily Computation

As an alternative, the Commission could have proposed a threshold higher

¹⁵⁰ See Table 7 below in section IV.E.6 of this release for numbers based on the June 2022 to May 2023 period.

¹⁵¹ See 5 U.S.C. 601 through 612.

or lower than \$250 million in average total credits. Under these alternatives, fewer or more carrying broker-dealers would be required to perform their customer and PAB reserve computations daily. For example, if the threshold was set at \$100 million, a total of 81 broker-dealers would be scoped into the new requirements compared to the 63 under the proposal. Similarly, if the threshold was set at \$1 billion, only 46 broker-dealers would be scoped into the new requirements.¹⁵²

For the case of the \$100 million threshold, with more carrying broker-dealers computing daily, there would possibly be fewer broker-dealers having a mismatch between the net cash owed to the carrying broker-dealer's customers and the amounts deposited in their customer or PAB reserve bank accounts. The potential cost of this alternative implies that more broker-dealers would incur the burden of performing their customer and PAB reserve computations daily. If the threshold were set at \$1 billion, fewer carrying broker-dealers would face the costs of a daily computation than under the proposal. However, there would be fewer carrying broker-dealers computing daily, suggesting the potential for more carrying broker-dealers having a mismatch than under the proposal.

5. Calculation Based on the Maximum Value Over the Past Year

The proposed \$250 Million Threshold would be the arithmetic mean of the total credits in the customer and PAB reserve computations reported on the twelve most recently filed month-end FOCUS Reports.¹⁵³ As an alternative, the Commission could have proposed a threshold based on the maximum value for total credits during the most recently ended calendar year. This alternative may more appropriately account for the implied capacity of the carrying broker-dealer's reserve bank accounts. For example, if total credits related to customers or PAB account holders' activity fluctuate throughout a year or based on economic cycles and such fluctuations are predictable, the maximum value of total credits may be more representative of the customer transactions' volume. As another example, if a carrying broker-dealer experiences trending growth of its

¹⁵² See Table 7 below in section IV.E.6 of this release for numbers based on the June 2022 to May 2023 period.

¹⁵³ This would mean, for example, if a carrying broker-dealer was required to file 12 FOCUS Reports for a calendar year, the carrying broker-dealer would add up the Total Credits reported in both the customer and PAB reserve formulas in each of the 12 FOCUS Reports filed, and divide the total by 12 to compute the arithmetic mean.

customer base, the maximum value of total credits would also be more representative of the current size of the customer base.

Table 6 below regroups carrying broker-dealers based on the maximum number reported for total credits within a given year. Under this alternative, 74 carrying broker-dealers would be scoped

into the compliance with performing the customer and PAB reserve computations daily, compared to the 63 that would be so under the proposal.

TABLE 5—THRESHOLD BASED ON MAXIMUM TOTAL CREDITS DURING 2022

	Number	Total assets (\$B)	Total customer credits, \$MM			Total PAB credits, \$MM			Total credits, \$MM	
			Number	Mean	Median	Number	Mean	Median	Mean	Median
>\$0–100MM	70	78.1	70	15.5	3.4	16	1.2	.....	16.6	4
\$100–250MM	18	42.8	18	161.0	165.9	10	12.3	.....	166.6	165.9
\$250–500MM	13	142	13	354.5	371.6	4	1.9	.....	354.9	373.3
\$500MM–1B	8	87.6	8	705.7	736.8	5	35.2	6.7	723.6	765.2
\$1–5B	25	584.8	25	2,338.1	2,057.1	21	212.5	6.9	2,513.7	2,058.2
\$5–10B	6	149.8	6	7,070.8	6,367.5	6	898.8	57.3	7,955.5	7,736.7
≥10B	22	3,402	22	55,584.5	26,096.5	20	8,197.1	696.4	62,990.5	32,340
Total ^a	162	4,487.1	162	8,295.1	171	82	1,183	0	9,326.7	180

^a Table excludes carrying broker-dealers with zero reported credits in 2022.

A benefit of this alternative is those carrying broker-dealers with the largest amounts of total credits would be scoped into daily computing, where the largest credits reported (as opposed to the average) could be more indicative of a potential mismatch between the net cash owed to customers and the reserve account balances. However, this

alternative may also create uncertainty if any cyclical behavior of total credits that has occurred over some historical period, changes unexpectedly, leading to potential for a carrying broker-dealer oscillating between weekly and daily computations and deposits from year to year.

Table 7 summarizes the number of affected broker-dealers under the alternatives proposed thus far versus the proposal, both for the rolling sample period defined from January 2022 to December 2022 and for the period defined from June 2022 to May 2023.

TABLE 7—SUMMARY OF AFFECTED BROKER-DEALERS UNDER PROPOSAL VERSUS ALTERNATIVES

Alternatives vs. proposal	Number of affected broker-dealers (based on period January 2022 to December 2022)	Number of affected broker-dealers (based on period June 2022 to May 2023)
Proposal	63	61
Alternatives:		
Alt 1 Over-Funding	162	162
Alt 2 \$1B in Total Assets	80	79
Alt 2 \$50MM in Net Capital	104	103
Alt 3 Daily for all	162	162
Alt 4 Average T.C. >\$1B	46	44
Alt 4 Average T.C. >\$100MM	81	76
Alt 5 Maximum Total Credits	74	69

6. Daily Computation if an Average Required Deposit Exceeds a Threshold

As an alternative to performing the customer and PAB reserve computations daily for carrying broker-dealers over a threshold (defined by average total credits), the Commission could have proposed an approach that would require a daily computation in the case where the required reserve bank account deposit as a share of the reserve bank account balance prior to such deposit exceeds a certain percentage threshold (e.g., 5% or 10%).¹⁵⁴

This alternative approach would account for broker-dealer-specific trends related to customer transactions. If the customer base differs substantially between carrying broker-dealers, with customers of some broker-dealers trading more often or doing account activities that increase the carrying broker-dealer’s total credits by more compared to the customer base of other broker-dealers, this alternative approach would focus only on those carrying broker-dealers that typically experience larger reserve mismatches. However, given the information displayed in Table 5, there does not appear to be a perfect correlation with broker-dealer size (measured by average total credits),

and the deposit “mismatch.”¹⁵⁵ Smaller-broker dealers have an average mismatch more than 5 percent (based on the January 2022 to December 2022 period), implying the possibility of an undue burden with respect to compliance costs. That latter could ultimately be passed onto the carrying broker-dealers’ customers and PAB account holders.

¹⁵⁴ See discussion related to Table 5 in section IV.B.2. of this release.

¹⁵⁵ Computed by dividing the numbers in column four by the numbers in column three of panel A of Table 5.

7. Daily Computation Requirement Based on Average Total Credits per Number of Customer and PAB Accounts

As an alternative to performing the customer and PAB reserve computations daily for carrying broker-dealers over a threshold (defined by average total credits), the Commission could require daily computations based on *average total credits per number of customer accounts*. While a failure of carrying broker-dealers with smaller amounts of total credits may not pose a significant risk of depletion to the SIPC Fund, a threshold based on the average total credits may have limitations from an individual customer or PAB account holder perspective. This is because such a threshold does not account for the number of customers and PAB account holders a carrying broker-dealer might have and is disconnected from the per-customer protection approach that is used by SIPC.¹⁵⁶

For example, consider two broker-dealers, both with \$150 million in total credits which is below the \$250 million. The first broker-dealer has three customers, each contributing \$50 million in credits towards the broker-dealer's aggregate value of total credits, and the second broker-dealer has 100 customers each contributing \$1.5 million in credits towards the broker-dealer's aggregate value of total credits. Recall that the maximum advance from the SIPC Fund is \$500,000 per customer. Consider a situation where both broker-dealers fail and their reserve bank accounts are underfunded by more than one percent of what is owed to customers (*i.e.*, the shortage is above \$1.5 million). In this situation, the customers of the second broker-dealer would be made whole promptly with an advance from the SIPC Fund, but the customers of the first broker-dealer would not be made whole (because the per-customer loss is above maximum

per-customer SIPC advance of \$500,000) until SIPC recovers funds from the broker-dealer, which may take some time.

The above example notwithstanding, data from the FOCUS Reports for 2022 suggests the potential for this concern is likely negligible. Table 8 displays the amounts of average total credits per total accounts for each size grouping of broker-dealers. For the 162 firms that reported positive total credits in December 2022, the average amount of average total credits per account (with the number of customer accounts and PAB accounts combined) was notably larger for the firms above the \$250 Million Threshold than for broker-dealers below the threshold. Firms above the \$250 Million Threshold had about \$19 million per customer account, while firms below the \$250 Million Threshold had about \$1 million on average per customer account.¹⁵⁷

TABLE 8—THRESHOLD BASED ON AVERAGE TOTAL CREDITS PER ACCOUNTS DURING 2022

	Number	Number of accounts (Cust + PAB)	Total credits \$MM	Total credits per account \$MM
		Mean	Mean	Mean
>\$0–100MM	81	204,081	15.3	0.7
\$100–250MM	18	311,261	137.6	1.9
\$250–500MM	8	122,261	383.3	0.1
\$500MM–1B	9	114,678	691.8	60.3
\$1–5B	18	1,542,836	2,184.2	34.3
\$5–10B	7	6,226,305	6,599.6	1.9
≥10B	21	7,700,435	58,619.8	3.0
Total	162	1,587,598	8,207	9.8

8. Daily Computation Based on Average Total Credits From the Most Recent Calendar Year

As an alternative to performing the customer and PAB reserve computations daily based on a 12-month rolling average of total credits, the Commission could instead require computation based on the arithmetic mean of the sum of total credits over the 12 months in the most recent calendar year. For example, whether a carrying-broker dealer exceeded the \$250 Million Threshold at any point in 2023, would be based on the average total credits from January 2022 through December 2022.

The potential benefit of basing the average total credit amount on the most

recent calendar year is that carrying broker-dealers would know with certainty if they fell above or below the proposed \$250 Million Threshold and would be subject to daily or weekly computing for the entirety of the next calendar year. This potential benefit contrasts with the possible uncertainty that the rolling average computation would introduce for carrying broker-dealers that are close to the proposed \$250 Million Threshold. That uncertainty may create an added cost for those carrying broker-dealers as they would need to constantly monitor their standing with respect to the \$250 Million Threshold. This monitoring may involve additional staff, or existing staff

devoting additional time to that task, and suggests the cost of the proposal may be marginally higher for some carrying broker-dealers than the cost estimates cited earlier in this release.¹⁵⁸ Or, wishing to avoid this monitoring cost, the carrying broker-dealer may have to decide to switch to daily (or weekly) once and for all, which may also imply additional costs.

However, a potential cost of this alternative is that, over the course of a year, a carrying broker-dealer computing weekly (for example) may exceed the \$250 Million Threshold. This may result in a situation where a carrying broker-dealer with average total credits above the \$250 Million Threshold would not

¹⁵⁶ Per 15 U.S.C. 78fff–2(c), customers of a failed broker-dealer have the right to share *pro rata* with other SIPA customers in the customer property held by that broker-dealer. See section I.B.3. of this release for more details.

¹⁵⁷ Calculated from monthly FOCUS Reports for 2022. The Commission divided average total credits in 2022 for each broker-dealer by the number of total customer and PAB accounts for each broker-dealer (Lines 8080 and 8081, respectively), then computed the average of the per customer amount for each size category, and above and below the

\$250 Million Threshold. Lines 8080 and 8081 are reported in the December FOCUS Report each year, hence those numbers are not yet available for the rolling averages beyond 2022.

¹⁵⁸ See *infra* section V. of this release (discussing PRA).

be engaging in daily computation—as they would with a timelier and up-to-date rolling average—and the risks of weekly computing discussed in this release would remain present for that carrying broker-dealer.

F. Request for Comment

The Commission requests comment on all aspects of the economic analysis of the proposed amendments. To the degree possible, the Commission requests that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendments or any reasonable alternatives. In particular, the Commission ask commenters to consider the following questions:

18. What additional qualitative or quantitative information should be considered as part of the baseline for the economic analysis of these amendments?

19. Are the benefits and costs of proposed amendments accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs. What additional considerations can be used to estimate the benefits and costs of the proposed amendments?

20. Are the effects on competition, efficiency, and capital formation arising from the proposed amendments accurately characterized? If not, why not?

21. Is the statement related to carrying broker-dealers with greater economies of scale gaining a competitive advantage, in the case that any increased costs of compliance are passed onto customers to a lesser degree, accurately characterized? If not, why not?

22. Are the statements related to an increase in liquidity in securities markets, arising from a promotion of confidence in the broker-dealer industry, and/or more efficient management of funds due to lower likelihood of mismatch, accurately characterized? If not, why not?

23. Are the statements related to operational efficiency increasing because of carrying broker-dealers' potential ability to withdraw excess funds in a timelier manner and thus, manage their funds and operations more effectively, accurately characterized? If not, why not?

24. Are the economic effects of the above alternatives accurately characterized? If not, why not? Should any of the costs or benefits be modified?

What, if any, other costs or benefits should be taken into account?

25. Are there other reasonable alternatives to the proposed amendments that should be considered? What are the costs, benefits, and effects on competition, efficiency, and capital formation of any other alternatives?

26. Is the statement related to larger carrying broker-dealers' economies of scale accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs. What additional considerations can be used to estimate the benefits and costs of the proposed amendments?

V. Paperwork Reduction Act

The proposed amendments to paragraph (e) of Rule 15c3–3 contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (“PRA”).¹⁵⁹ The Commission is submitting the proposed collection of information to the Office of Management and Budget (“OMB”) for review and approval in accordance with the PRA and its implementing regulations.¹⁶⁰ For the proposed amendments, the title of the existing information collection is “Customer Protection—Reserves and Custody of Securities” (OMB Control No. 3235–0078), and that collection would be revised by the changes in this proposal, if adopted. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.¹⁶¹

The burden estimates contained in this section do not include any other possible costs or economic effects beyond the burdens required to be calculated for PRA purposes.

A. Summary of Collections of Information Under the Proposed Rule Amendments

Rule 15c3–3 requires each carrying broker-dealer to maintain a reserve of cash and/or qualified securities in a customer reserve bank account that is at least equal in value to the net cash owed to customers.¹⁶² Carrying broker-dealers also maintain a reserve of cash and/or qualified securities in a PAB reserve bank account in an amount that is at least equal in value to the net cash owed

to PAB account holders.¹⁶³ In order to determine the amount required to be deposited in the customer reserve bank account and the PAB reserve bank account, Rule 15c3–3 requires carrying broker-dealers to perform weekly customer and PAB reserve computations as of the close of the last business day of each week.¹⁶⁴ The rule also requires carrying broker-dealers to make a record of each such computation.¹⁶⁵

Under the proposed amendments, carrying broker-dealers with average total credits equal to or greater than \$250 million would be required to perform the customer and PAB reserve computations daily instead of weekly, and would also be required to make a record of each such daily computation.¹⁶⁶ The proposed amendments also provide that a carrying broker-dealer performing daily customer and PAB reserve computations may elect to perform weekly computations if its average total credits fall below \$250 million and it notifies its designated examining authority, in writing, of this election at least 60 calendar days prior to starting weekly computations.¹⁶⁷

B. Proposed Use of the Information

Rule 15c3–3 is an integral part of the Commission's financial responsibility program for broker-dealers. The requirement to document in writing the customer and PAB reserve computations facilitates the process by which the Commission and the broker-dealer's designated examining authority examines the broker-dealer's compliance with Rule 15c3–3. The purpose of the proposed 60-day prior written notice requirement is to provide the designated examining authority with prior notice that the carrying broker-dealer is switching from daily to weekly customer and PAB reserve computations and provide the designated examining authority the opportunity to contact the firm and ask how it intends to implement the change. This would assist the designated examining authority in monitoring the firm.

¹⁶³ 17 CFR 240.15c3–3(e). See also section I.B.2. of this release (discussing the PAB account holder reserve requirements of Rule 15c3–3 in more detail).

¹⁶⁴ 17 CFR 240.15c3–3(e). Rule 15c3–3 also permits certain broker-dealers to perform their reserve computations monthly. 17 CFR 240.15c3–3(e)(3)(i) and (iii). Some carrying broker-dealers also elect to perform daily customer and PAB reserve computations. 17 CFR 240.15c3–3(e)(3)(iv).

¹⁶⁵ 17 CFR 240.15c3–3(e)(3)(v).

¹⁶⁶ See paragraph (e)(3)(i)(B)(1) of Rule 15c3–3, as proposed to be amended.

¹⁶⁷ See paragraph (e)(3)(i)(B)(2) of Rule 15c3–3, as proposed to be amended.

¹⁵⁹ See 44 U.S.C. 3501 *et seq.*

¹⁶⁰ See 44 U.S.C. 3507; 5 CFR 1320.11.

¹⁶¹ See 5 CFR 1320.11(l).

¹⁶² 17 CFR 240.15c3–3(e). See also section I.B.1. of this release (discussing the customer reserve requirements of Rule 15c3–3 in more detail).

C. Respondents

1. Recordkeeping Requirements

Respondents under the proposed amendments would be carrying broker-dealers with average total credits equal to or exceeding \$250 million. The Commission estimates there are currently approximately 63 carrying broker-dealers that would *have average total credits* equal to or exceeding \$250 million based on a review of FOCUS Report data for the 12 months ended December 31, 2022. Of these carrying broker-dealers, the Commission estimates that 11 already perform the customer reserve computation daily. Of the 63 carrying broker-dealers that would have average total credits equal to or exceeding \$250 million, the Commission estimates that 49 have total credits relating to PAB account holders of greater than \$0, with 10 of these carrying broker-dealers already performing the PAB reserve computation daily. Consequently, for the purposes of the PRA, the Commission estimates that there are 52 respondents for the customer reserve computation, and 39 respondents for the PAB reserve computation. These respondents are currently included in the collection of information associated with Rule 15c3-3 related to weekly computations for the customer and PAB reserve computations. However, as a result of the proposed amendments, these respondents would need to perform daily customer and PAB reserve computations (rather than weekly computations).

2. Notification Requirement

Based on a review of FOCUS Report data for the 2022 calendar year, the Commission preliminarily estimates that one carrying broker-dealer per year would provide notice to their designated examining authority that the carrying broker-dealer's average total credits has fallen below the \$250 Million Threshold, and that such carrying broker-dealer would switch from a daily computation to a weekly computation.

D. Total Annual Burden Estimate

1. Recordkeeping Requirements

Carrying broker-dealers that would be subject to the requirement to perform daily customer and PAB reserve computations under this proposal are required to perform such computations weekly. Therefore, the Commission preliminarily estimates that the proposed amendments would not impose any new one-time burdens on carrying broker-dealers to set up the

process of creating the required record of the computations. Instead, the Commission preliminarily believes the proposed amendments would impose increased ongoing burdens on the respondent carrying broker-dealers because they would be required to increase the frequency of the customer and PAB reserve computations and, therefore, produce additional records of the computations.

Specifically, the Commission believes that there would be an increase in the burdens associated with the collections of information titled "Rule 15c3-3(e)(3)—daily computations" for both the customer and PAB reserve computations, and a corresponding decrease in the burdens associated with the collections of information titled "Rule 15c3-3(e)(3)—weekly computations" for the customer and PAB reserve computations as certain carrying broker-dealers will be required to shift from weekly to daily computations in connection with the proposed amendments. Based on experience with customer and PAB reserve computations, the Commission preliminarily estimates that it takes between one and five hours to make a record of each such computation, and that the average time spent across all of the firms is 2.5 hours.¹⁶⁸

As a result, the Commission estimates that the proposed amendments would impose aggregate annual ongoing burdens on respondent carrying broker-dealers required to perform daily customer and PAB reserve computations of 32,500 hours and 24,375 hours, respectively, or a total of 56,875 hours.¹⁶⁹ When added to the currently approved burden hours of 7,500 hours and 1,875 hours for the customer and PAB reserve computations, respectively, the proposed revised burden hour estimates would be 40,000 hours for the daily customer reserve computation, and 26,250 hours for the daily PAB reserve computation.

In addition to this increase, the Commission preliminarily estimates that there will be a corresponding decrease in the collections of information titled "Rule 15c3-3(e)(3)—weekly computations" for both the

¹⁶⁸ This is consistent with the current collection of information for the customer and PAB reserve computations.

¹⁶⁹ This figure was calculated as follows: 52 respondent carrying broker-dealers that would be required to perform daily customer reserve computations \times 2.5 hours/day \times 250 business days = 32,500 hours, plus 39 respondent carrying broker-dealers that would be required to perform daily PAB reserve computations \times 2.5 hours/day \times 250 business days = 24,375 hours. Therefore, the total estimated burden is 32,500 hours + 24,375 hours = 56,875 hours.

customer and PAB reserve computations. Specifically, the Commission preliminarily estimates that the proposed amendments would result in a revised burden hour estimate of 14,430 hours with respect to weekly customer reserve computations,¹⁷⁰ (a decrease of 6,760 hours)¹⁷¹ and 2,210 hours with respect to the weekly PAB reserve computations¹⁷² (a decrease of 5,070 hours).¹⁷³

2. Notification Requirement

Based on its experience with other notification requirements, the Commission preliminarily estimates that it would take a carrying broker-dealer 30 minutes to prepare and send the notification regarding its election to perform weekly customer and PAB reserve computations to its designated examining authority. This burden would represent a new collection of information. The Commission preliminarily estimates that relatively few carrying broker-dealers would send the notice either because their average total credits would be substantially greater than \$250 million or because they would continue to perform daily computations even if their average total credits fell below the \$250 Million Threshold, given the liquidity benefits of performing a daily computation. Consequently, the Commission preliminarily estimates that one carrying broker-dealer per year would send the notice for a burden of 0.5 hours per year.¹⁷⁴

¹⁷⁰ This figure was calculated as follows: 163 respondents currently approved under the information collection related to weekly customer reserve computations titled "Rule 15c3-3(e)(3)—weekly computations" minus the 52 respondent carrying broker-dealers that would be required under the proposed amendments to perform daily customer reserve computations = 111 respondents \times 2.5 hours \times 52 responses annually = 14,430 hours.

¹⁷¹ This figure was calculated as follows: 21,190 burden hours currently approved with respect to the collection of information related to weekly customer reserve computations minus the revised proposed estimate of 14,430 hours resulting from fewer respondents performing weekly computations = 6,760 hours.

¹⁷² This figure was calculated as follows: 56 respondents currently approved under the information collection related to weekly PAB reserve computations titled "Rule 15c3-3(e)(3)—weekly computations" minus the 39 respondent carrying broker-dealers that would be required under the proposed amendments to perform daily PAB reserve computations = 17 respondents \times 2.5 hours \times 52 responses annually = 2,210 hours.

¹⁷³ This figure was calculated as follows: 7,280 burden hours currently approved with respect to the collection of information related to weekly PAB reserve computations minus the revised proposed estimate of 2,210 hours resulting from fewer respondents performing weekly computations = 5,070 hours.

¹⁷⁴ One response per year \times 0.5 hours per response = 0.5 hours.

3. Summary of the Proposed Burden Revisions ¹⁷⁵

As a result of the proposed amendments, the burdens associated with daily computations for customer reserve accounts would increase by 32,500 hours and the burdens associated with daily computations for PAB reserve accounts would increase by 24,375 hours. This increase would be

accompanied by a decrease in burdens associated with weekly computations for customer and PAB reserve accounts of 6,760 hours and 5,070 hours, respectively, as carrying broker-dealers with average total credits of \$250 million or more shift from performing the customer and PAB reserve computations on a weekly to daily basis.

Additionally, a new collection of information related to the notification

requirement for carrying broker-dealers reverting to a weekly computation of the customer and PAB reserve formulas will result in an addition 0.5 burden hours per year.

The net increase in estimated annual burdens associated with the proposed amendments to Rule 15c3-3 would be 45,045.5 hours. The table below summarizes these changes.

Name of information collection	Currently approved estimated annual industry burden (hours)	Proposed estimated increase/decrease in annual industry burden (hours)	Proposed revised annual industry burden (hours)
Rule 15c3-3(e)(3)—daily computations for customer reserve account ¹	7,500	32,500	40,000
Rule 15c3-3(e)—daily computations for PAB reserve account ²	1,875	24,375	26,250
Rule 15c3-3(e)(3)—weekly computations for customer reserve account ³	21,190	(6,760)	14,430
Rule 15c3-3(3)(3)—weekly computations for PAB reserve account ⁴ ..	7,280	(5,070)	2,210
Rule 15c3-3(e)(B)(1) notification	N/A	0.5	0.5
Total proposed change		45,045.5	

1. In the most recently approved supporting statement for Rule 15c3-3, the title of this collection of information is “Rule 15c3-3(e)(3)—daily computations.” The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to daily computations for PAB reserve accounts, which currently shares the same title.

2. In the most recently approved supporting statement for Rule 15c3-3, the title of this collection of information is “Rule 15c3-3(e)(3)—daily computations.” The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to daily computations for customer reserve accounts, which currently shares the same title.

3. In the most recently approved supporting statement for Rule 15c3-3, the title of this collection of information is “Rule 15c3-3(e)(3)—weekly computations.” The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to weekly computations for PAB reserve accounts, which currently shares the same title.

4. In the most recently approved supporting statement for Rule 15c3-3, the title of this collection of information is “Rule 15c3-3(e)(3)—weekly computations.” The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to weekly computations for customer reserve accounts, which currently shares the same title.

E. Collections of Information Are Mandatory

The collections of information under the proposed amendments to Rule 15c3-3 would be mandatory as to the carrying broker-dealers that would be subject to them.

F. Confidentiality of Response to Collections of Information

The Commission expects to receive confidential information in connection with the collections of information. A carrying broker-dealer requested by the Commission to produce records related to the proposed amendments under Rule 15c3-3 could request confidential treatment of the information.¹⁷⁶ If a confidential treatment request was made, the Commission anticipates that it would keep the information confidential subject to applicable law.¹⁷⁷

G. Retention Period for Recordkeeping Requirements

The customer and PAB reserve computations must be preserved in accordance with the requirements of Rule 17a-4.¹⁷⁸ Written notifications from carrying broker-dealers electing to compute the customer and PAB reserve formulas weekly after being subject to the daily requirement would be submitted to the carrying broker-dealer’s designated examining authority. These notices would constitute communications relating to a carrying broker-dealer’s “business as such” and, therefore, will need to be retained for three years.¹⁷⁹

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

27. Evaluate whether the proposed collections of information are necessary for the proper performance of the

Commission’s functions, including whether the information shall have practical utility;

28. Evaluate the accuracy of the Commission’s estimates of the burdens of the proposed collections of information;

29. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

30. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

31. Evaluate whether the proposed rules and rule amendments would have any effects on any other collection of information not previously identified in this section.

Persons submitting comments on the collection of information requirements

¹⁷⁵ OMB Control No. 3235-0078 for Rule 15c3-3 includes thirty separate information collections. This summary show only those information collections that would be revised as a result of the proposed amendments.

¹⁷⁶ See 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission’s website at <https://www.sec.gov/foia/howfo2.htm#privacy>.

¹⁷⁷ See, e.g., 15 U.S.C. 78x (governing the public availability of information obtained by the Commission); 5 U.S.C. 552 *et seq.*

¹⁷⁸ See 17 CFR 240.15c3-3(e)(3)(v); 17 CFR 240.17a-4.

¹⁷⁹ See 17 CFR 240.17a-4(b)(4).

should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File Number S7-11-23. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7-11-23 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549-2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996,¹⁸⁰ a rule is “major” if it has resulted, or is likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, investment, or innovation. The Commission requests comment on whether the proposed rules and rule amendments would be a “major” rule for purposes of the Small Business Regulatory Enforcement Fairness Act. In addition, the Commission solicits comment and empirical data on: the potential effect on the U.S. economy on annual basis; any potential increase in costs or prices for consumer or individual industries; and any potential effect on competition, investment, or innovation.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (“RFA”) requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.¹⁸¹ Section 603(a) of the Administrative Procedure Act,¹⁸² as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact

of such rulemaking on “small entities.”¹⁸³ Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.¹⁸⁴

For purposes of Commission rulemaking in connection with the RFA, a small entity includes a broker-dealer that: (1) had 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 paragraph (d) of 17 CFR 240.17a-5 (Exchange Act Rule 17a-5(d)),¹⁸⁵ or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁸⁶

The proposed rule amendments to Rule 15c3-3 would require certain carrying broker-dealers to perform the customer and PAB reserve computations on a daily rather than weekly basis. Only carrying broker-dealers would be impacted by the proposed rule amendment.

Based on FOCUS Report data, the Commission estimates that as of December 31, 2022, there were approximately 790 broker-dealers that were “small” for the purposes of Rule 0-10. The Commission estimates that none of these small broker-dealers is a carrying broker-dealer. As a result, the proposed rule amendments likely would not apply to small broker-dealers. Therefore, the Commission believes that the proposed amendments would not have a significant impact on a substantial number of small broker-dealers.

For the foregoing reasons, the Commission certifies that the proposed amendments to Rule 15c3-3, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission requests comment regarding this certification. The

¹⁸³ Section 601(b) of the RFA permits agencies to formulate their own definitions of “small entities.” See 5 U.S.C. 601(b). The Commission has adopted definitions for the term “small entity” for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0-10 (“Rule 0-10”).

¹⁸⁴ See 5 U.S.C. 605(b).

¹⁸⁵ 17 CFR 240.17a-5(d).

¹⁸⁶ See 17 CFR 240.0-10(c).

Commission invites commenters to address whether the proposed amendments to Rule 15c3-3 would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to support the extent of such impact.

Statutory Authority

The Commission is proposing amendments to Rule 15c3-3 under the Commission’s rulemaking authority pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly, sections 15 and 23(a) (15 U.S.C. 78o and 78w(a)), thereof.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78j-4, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.15c3-3 is also issued under 15 U.S.C. 78c-5, 78o(c)(2), 78(c)(3), 78q(a), 78w(a); sec. 6(c), 84 Stat. 1652; 15 U.S.C. 78fff.

* * * * *

■ 2. Section 240.15c3-3 is amended by revising paragraphs (e)(3)(i) and (iv) to read as follows:

§ 240.15c3-3 Customer protection—reserves and custody of securities.

* * * * *

(e) * * *

(3) * * *

(i)(A) Except as provided in paragraphs (e)(3)(i)(B)(1) and (C) of this section, computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account as specified in paragraph (e)(1)

¹⁸⁰ Public Law 104-121, Title II, 110 Stat. 857 (1996).

¹⁸¹ See 5 U.S.C. 601 *et seq.*

¹⁸² 5 U.S.C. 603(a).

of this section must be made weekly, as of the close of the last business day of the week, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day.

(B)(1) A broker or dealer with average total credits that are equal to or greater than \$250 million must make the computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account, as specified in paragraph (e)(1) of this section, daily as of the close of the previous business day, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. A broker or dealer must comply with this paragraph (e)(3)(i)(B)(1) no later than six months after having average total credits equal to or greater than \$250 million and until such time as it has average total credits of less than \$250 million and 60 days after having provided the 60-day notice required by paragraph (e)(3)(i)(B)(2) of this section. For purposes of this paragraph (e)(3), *average total credits* means the arithmetic mean of the sum of Total Credits in the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation reported in the 12 most recently filed month-end Forms X-17A-5.

(2) A broker or dealer computing the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation daily under paragraph (e)(3)(i)(B)(1) of this section whose average total credits falls below \$250 million may elect to compute the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section. Such broker or dealer must notify its designated examining authority, in writing, of this election at least 60 calendar days before computing the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section.

(C) A broker or dealer which has aggregate indebtedness not exceeding 800 percent of net capital (as defined in § 240.15c3-1) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding \$1,000,000, may in the alternative make the Customer Reserve Bank Account computation monthly, as of the close of the last business day of the month, and, in such event, must deposit not less than 105 percent of the amount so computed no later than one

hour after the opening of banking business on the second following business day.

* * * * *

(iv) Computations in addition to the computations required in this paragraph (e)(3), other than computations made under paragraph (e)(3)(i)(B)(1) of this section, may be made as of the close of any business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.

* * * * *

By the Commission.

Dated: July 12, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023-15200 Filed 7-17-23; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

[Docket No. FR-6291-P-01]

RIN 2502-AJ60

Revision of Investing Lenders and Investing Mortgagees Requirements and Expansion of Government-Sponsored Enterprises Definition

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to revise the requirements for investing lenders and investing mortgagees to gain or maintain status as a Federal Housing Administration (FHA) approved lender or mortgagee. This proposed revision would make FHA's approval requirements consistent with investing mortgagees' and investing lenders' risk, reduce barriers to FHA approval for new investing mortgagees and investing lenders, and increase access to capital for all FHA-approved mortgagees and lenders. HUD also proposes to make clarifying edits to ensure that certification language is applicable to investing lenders and investing mortgagees. In addition, HUD proposes to define the Government-Sponsored Enterprises (GSEs) separately from other governmental-type entities to ensure that FHA requirements specific to loan origination do not improperly apply to the GSEs. Finally, HUD proposes to eliminate obsolete language related to

lender and mortgagee net worth requirements.

DATES: *Comment Due Date:* September 18, 2023.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Volky Garcia, Division Director, Department of Housing and Urban Development, 451 7th Street SW,