proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO AL D Maxwell AFB, AL [New]

Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′03″N, long. 86°23′38″W)

That airspace extending upward from the surface to and including 2,200 feet MSL within a 5-mile radius of Maxwell AFB, excluding that airspace south of a line connecting the 2 points of intersection with the east end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and with the west end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field to the intersection of the Montgomery VORTAC 320° radial, thence extending northwest connecting the 2 points of intersection with a 5-mile radius of Maxwell AFB. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO AL D Montogomery, AL [Revised]

Montogmery Regional Airport—Dannelly Field, AL
(Lat. 32°18′03″N, long. 86°23′38″W)
Maxwell AFB
(Lat 32°22′45″N, long. 86°21′45″W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, excluding that airspace north of a line connecting the 2 points of intersection with the east end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and with the west end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field to the intersection of the Montgomery VORTAC 320° radial, thence extending northwest connecting the 2 points of intersection with a 5-mile radius of Montgomery Regional Airport—Dannelly Field. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO AL E2 Maxwell AFB, AL [New]

Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′03″N, long. 86°23′38″W)

Within a 5-mile radius of Maxwell AFB, excluding that airspace south of a line connecting the 2 points of intersection with the east end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and with the west end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field to the intersection of the Montgomery VORTAC 320° radial, thence extending northwest connecting the 2 points of intersection with a 5-mile radius of Maxwell AFB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO AL E2 Montgomery, AL [Revised]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′03″N, long. 86°23′38″W)
Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)

Within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, excluding that airspace north of a line connecting the 2 points of intersection with the east end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and with the west end of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field to the intersection of the Montgomery VORTAC 320° radial, thence extending northwest connecting the 2 points of intersection with a 5-miles radius of Montgomery Regional Airport—Dannelly Field. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on September 28, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–27252 Filed 10–8–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40518; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rule.

SUMMARY: The Securities and Exchange Commission is reproposing for comment amendments to its broker-dealer books and records rules, Rule 17a–3 and Rule 17a–4, under the Securities Exchange Act of 1934. The original proposal was made in 1996 in response to concerns raised by members of the North American Securities Administrators Association about the adequacy of the Commission's books and records rules as to sales practices. The reproposed amendments incorporate comments received in response to the original proposal. These amendments are designed to clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The reproposed amendments also specify the books and records that broker-dealers would have to make available at their local offices. The reproposed books and records rules are specifically designed to assist securities regulators when conducting sales practice examinations.

DATES: Comments must be received on or before November 9, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comments may also be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–26–98. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically

submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0131; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Deana A. La Barbera, Attorney, at (202) 942–0734; Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 17(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission ''as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act.[2] Rules 17a–3 and 17a–4 under the Exchange Act specify minimum requirements with respect to the records that broker-dealers must make as well as the periods during which those records and other documents relating to the broker-dealer's business must be preserved.[3] The Commission, self-regulatory organizations (''SROs''), and state securities regulators must have timely access to these records to conduct effective examinations and enforcement actions.

The reproposed recordkeeping requirements are intended to enable securities regulators to conduct more efficient and effective broker-dealer examinations primarily for compliance with sales practice requirements. For situations in which examiners uncover potential violations of law, the reproposed recordkeeping requirements would provide regulators with essential tools for enforcement investigations, and, when necessary, enforcement proceedings. In addition, the reproposed amendments that would require that records be kept at each local office of a broker-dealer would improve the ability of securities regulators, including state securities regulators, to conduct examinations of sales practice activities of individual offices of a broker-dealer.

In 1993, the North American Securities Administrators Association (''NASAA''), through its Broker-Dealer Operations Committee (''NASAA Committee''), commenced work on a model state regulation that would require broker-dealers to make and preserve books and records that would be valuable in examination and enforcement proceedings. The NASAA Committee presented a final draft of its model regulation for membership approval at NASAA's October 1995 meeting. At that meeting, the Commission's Chairman, Arthur Levitt, stated that supplemental state books and records requirements would impose a substantial burden on broker-dealers because of the possibility that each state's requirements would be inconsistent with those adopted by other states and that modification of the Commission's rules would be a less burdensome means of accomplishing NASAA's goals. At Chairman Levitt's request, NASAA's membership voted to defer taking further action with respect to the NASAA Committee's proposed model regulations to give the Commission an opportunity to develop appropriate amendments to its books and records rules.

On October 11, 1996, the National Securities Market Improvement Act of 1996 (''NSMIA'') was adopted.[4] NSMIA prohibited states from establishing books and records rules that differ from, or are in addition to the Commission's rules.[5] NSMIA also provided that the Commission must consult periodically with state securities regulators concerning the adequacy of the Commission's books and records rules.[6]

II. Proposing Release

On October 22, 1996, the Commission proposed amendments[7] to the books and records rules that were designed to further the Commission's role in protecting investors and to address the NASAA Committee's concern that the Commission's current books and records requirements do not obligate broker-dealers to make and retain records specifically designed to facilitate sales practice examinations and enforcement activities.

The amendments to Rule 17a–3 proposed in 1996 would have required broker-dealers to generate local office blotters, record supplemental information on brokerage order memoranda, create customer account forms, and maintain additional records concerning associated persons, customer complaints, and exceptional activity in customer accounts. The proposed amendments to Rule 17a–4 would have required broker-dealers to preserve additional records, including advertising and marketing materials, registrations and licenses, audit and examination reports, records concerning recommended securities, and manuals relating to compliance, supervision, and procedures. Further, the proposed amendments to Rule 17a–4 would have clarified and modified the Commission's existing requirements concerning preservation of certain correspondence and contracts. Finally, the proposed amendments to Rule 17a–4 would have supplemented the existing standards concerning the organization of books and records, required broker-dealers to designate a principal to be responsible for books and records compliance, and required broker-dealers to make certain records available at each of their local offices.

The Commission received approximately 178 written comments in response to the Proposing Release. Broker-dealers, trade associations, and law firms representing broker-dealers submitted 110 comment letters generally opposing some or all of the proposed amendments. State securities regulators and NASAA accounted for 33 comment letters generally supporting the proposed amendments. The balance of the comment letters were received from other individuals or entities interested in the Proposing Release.

Most broker-dealers opposed the proposed amendments because they believed the costs associated with implementing them would outweigh any increase in investor protection. Many broker-dealer commenters particularly opposed the proposed amendments requiring certain records to be kept at each local office and suggested that the records be maintained at one centralized location with the understanding that the records would be provided to regulators at a local office on a timely basis. Some broker-dealers were particularly concerned with the local office retention requirement because it would apply to one-person offices. These broker-dealers believed that these offices could be more effectively supervised if records were held at one centralized location. Small broker-dealers and those affiliated with insurance companies suggested that they be exempt from the provisions of the proposed amendments.

The letters submitted by the state securities regulators and NASAA, on the other hand, strongly supported the proposed amendments in their entirety. These commenters believed that the amendments would enable state securities regulators to conduct more thorough and efficient broker-dealer

[1] 15 U.S.C. 78a *et seq.*

[2] 15 U.S.C. 78q(a)(1).

[3] 17 CFR 240.17a–3 and 240.17a–4.

[4] Pub. L. 104–290, 110 Stat. 3416 (1996).

[5] 15 U.S.C. 78*o*(h).

[6] *Id.*

[7] Exchange Act Release No. 37850 (Oct. 22, 1996), 61 FR 55593 (Oct. 28, 1996) (''Proposing Release'').

examinations, particularly of local offices in their respective states. NASAA commented that state-level examinations have revealed that broker-dealers, hearing officers, and state courts had divergent interpretations of the Commission's books and records rules, that state examinations were often hindered by the absence of key records in local offices, that many branch records were poorly organized and inefficiently maintained, and that where records were maintained at a central location, there often were significant delays in the production of requested records. These commenters believed the amendments to Rules 17a–3 and 17a–4 would enable state securities regulators to more effectively conduct broker-dealer examinations, especially examinations of local branch offices of broker-dealers operating in their respective states.

III. Reproposed Amendments and Discussion

In response to numerous comments, the Commission is reproposing the amendments, which have been modified from the original proposal, to reduce the burden on broker-dealers without substantially detracting from the original objective of establishing rules that would facilitate examinations and enforcement activities of the Commission, SROs, and state securities regulators. Some of the reproposed rules may be duplicative of SRO recordkeeping rules;[8] nevertheless, the Commission is reproposing the rules because it believes certain recordkeeping requirements should be directly enforced by the Commission and should be available for states to include under their own laws.

A. Memoranda of Brokerage Orders and Dealer Transactions

Rules 17a–3(a)(6) and 17a–3(a)(7) currently require that brokerage order memoranda and dealer purchase and sale memoranda (''order tickets'') include information concerning the terms and conditions of the order, the account for which the order is entered, the time of entry, the execution price, and to the extent feasible, the time of execution (or cancellation) of the order.[9] The Proposing Release would have required that each order ticket also identify the associated person who entered the order and indicate whether the order was solicited or unsolicited.

As reproposed, an order ticket would still have to identify the associated person who entered the order, but it would not have to note whether the transaction was solicited or unsolicited. Further, the reproposed amendments to Rules 17a–3(a)(6) and (7) would require that an order ticket contain the identity of any person, other than the associated person, who entered or accepted the order on behalf of a customer. This requirement would allow securities examiners to determine whether particular persons, including unregistered persons, are engaged in sales practice violations.

The reproposed amendments provide flexibility in how a broker-dealer would have to record the identity of the person entering the order. Under the reproposed amendments, if a broker-dealer uses an electronic system to generate order tickets that does not have a field available to capture the identity of a person, other than the associated person, entering an order on a customer's behalf, the broker-dealer would not have to modify its system to enter that detail on the order ticket; alternatively, the broker-dealer could create a separate record identifying the person.

The Commission seeks comment on how this rule should be applied to firms whose customers use an e-mail address, an electronic trading system, a general telephone number, or other system or procedure to submit orders. The Commission also seeks comment on whether certain firms, such as firms that accept unsolicited orders only or firms that do not designate a specific associated person for each account, should be exempt from this rule.

The reproposed amendments also would add a requirement that a broker-dealer record on the order ticket the time at which the broker-dealer receives a customer order, even if the order is subsequently executed. The current rule requires this information only when the order is not executed. This amendment would enable examiners to review more easily a broker dealer's compliance with its best execution obligations and the requirement that a broker-dealer not trade ahead of its customers.[10]

B. Additional Records Concerning Associated Persons

Rule 17a–3(a)(12) currently specifies the types of records that a broker-dealer must maintain with respect to each of its associated persons. In addition to basic background information, the existing rule requires a broker-dealer to maintain records of each associated person's employment and disciplinary history. The Proposing Release would have required that each broker-dealer keep additional records concerning its associated persons, including registration and licensing materials, and that certain of these records be kept at each local office.

The reproposed amendments would not require that Forms U–4 and U–5, amendments to those forms, or state or SRO licenses be kept at local offices of the broker-dealer, or that a broker-dealer maintain records concerning an associated person's change in licensing status. As several commenters pointed out, this information is readily available through the Central Registration Depository (''CRD'').

The proposed amendments also would have required that each broker-dealer maintain records with respect to agreements between associated persons and the broker-dealer, customer complaint information, and client trading records for each associated person. The reproposal largely retains these requirements albeit in new proposed subsections of the rule.[11] These requirements would assist examiners in reviewing the sales practices of individual associated persons.

The reproposed amendments would require that each broker-dealer maintain a list of any internal identification numbers and CRD numbers assigned to associated persons and a list of associated persons working at, out of, or being supervised at or from each local office.[12] This information will assist examiners especially with respect to conducting an examination of a particular local office.

Finally, the reproposed amendments would delete the definition of associated person from Rule 17a–

[8] For example, the Commission would require broker-dealers to maintain information, such as investment objectives, about customers that would overlap certain provisions of National Association of Securities Dealers (''NASD'') Conduct Rule 3110 and New York Stock Exchange (''NYSE'') Rule 405.

[9] A number of firms have asked for guidance on the meaning of the term ''to the extent feasible.'' The time of execution should be included on the order ticket except for situations in which it may be impossible to determine the precise time when the transaction was executed; however, in that case the broker-dealer must note the approximate time of execution. Exchange Act Release No. 3040 (Oct. 13, 1941), 11 FR 10984.

[10] *See* 17 CFR 240.11Ac1–1 and 240.11Ac1–4. *See also* NASD Conduct Rules 2110 and 2320.

[11] The requirement regarding customer complaints has been moved to reproposed Rule 17a–3(a)(17). Other requirements relating to records for each associated person have been moved to Reproposed Rule 17a–3(a)(12) so that most of the records required to be kept about associated persons are located in the same paragraph of Rule 17a–3.

[12] The proposed amendments would have required broker-dealers to maintain a list identifying the local office where each associated person conducts the greatest portion of his or her business. This provision has been discarded in favor of the reproposed amendments to Rule 17a–3(a)(12).

3(a)(12)(ii). Given that the term associated person is defined in several provisions of the Exchange Act, a separate definition under the rule is unnecessary and potentially confusing.[13] Exchange Act provisions essentially define an associated person to include any partner, officer, director, or branch manager of a broker-dealer, and any person occupying a similar status or performing similar functions. In addition, the term associated person includes any person directly or indirectly controlling, controlled by, or under common control with a broker-dealer, or any employee of a broker-dealer. The Commission interprets the term associated person to include any independent contractor, consultant, franchisee, or other person providing services to a broker-dealer equivalent to those services provided by the persons specifically referenced in the statute.[14] Consistent with this position, the reproposed amendments would require broker-dealers to keep records regarding all such persons.

These records would not be required, however, for persons whose functions are solely clerical, ministerial, or not directly related to the securities business. For example, records would need to be retained for a consultant performing duties equivalent to those of an officer or a director of a broker-dealer, such as a chief financial officer; however, no records would be required for a consultant providing services related to a broker-dealer's health care plan. These records would be useful in determining whether individuals affiliated with a broker-dealer are engaged in sales activities and whether individuals who have been barred from association with broker-dealers are continuing their association.

C. Customer Account Records

The proposed amendments would have required broker-dealers to maintain for each customer account an account form that included basic identification and background information about the customer, including the customer's investment objectives. The Commission is reproposing Rule 17a–3(a)(16) with certain modifications to reflect the comments received regarding the proposed rule.

The reproposed amendments replace the term ''account form'' with ''record of each account of a customer.'' The term was changed in response to comments that the word ''form'' could be interpreted to mean paper records only and that many broker-dealers store customer information electronically.

The reproposed amendments would apply only to accounts that have natural persons as the beneficial owners. With respect to joint accounts composed of natural persons, the Commission specifically solicits comment as to whether the required information should be kept for each individual participant in a joint account or only for those individuals with authority to execute transactions in the account.

As proposed, if a customer's investment objectives included speculation or other high risk objectives, the broker-dealer would have had to record the percentage of the customer's investment capital dedicated to such objectives. The proposed rule also would have required that the portion of the account form regarding the customer's investment objectives be updated annually. In response to this proposal, many commenters stated that a customer's investment objectives can change frequently; thus, a record of specific investment objectives could quickly become inaccurate. Commenters also stated that using the phrase ''speculation or similar high-risk objective'' to categorize a customer's investment objectives would be imprecise. The reproposed amendments would still require that a customer's investment objectives or risk tolerance be noted; however, as reproposed, each broker-dealer would be able to use whatever formulation it chooses to categorize each customer's investment objectives or risk tolerance. Further, the reproposed amendments would not require that a customer's investment objectives be updated annually; rather, as discussed below, the investment objectives would need to be updated at least once every 36 months. These requirements would allow examiners to more effectively review for compliance with suitability requirements.

The Proposing Release would have required broker-dealers to furnish to each customer a copy of the customer's account form within 30 days of the first trade for the account or within 30 days of a change or correction to the contents of the account form. The reproposed amendments modify the original proposal and would require that the customer account record be furnished to a customer within 30 days of opening the account and thereafter at least once every 36 months or when the account record is updated to reflect a change in the customer's name, address, or investment objectives. This requirement would provide customers the opportunity to verify and update the information in their records and correct any misunderstandings or errors. If the account record is updated to reflect a change of address, the broker-dealer would have to furnish the account record to the new address and a notice of the change of address to the old address. The Commission requests comment on whether a broker-dealer should include a customer's social security number when sending an updated account record to the customer.

The neglect, refusal, or inability of a customer to provide or update any required information for the customer's account record would excuse the broker-dealer from obtaining the required information. However, when opening the customer account, the broker-dealer would be required to make a record of the explanation for the absence of the information. Although the customer's refusal to provide this information to the broker-dealer would excuse the firm from obtaining the information under proposed rule 17a–3(a)(16), the firm would still be required to comply with any applicable securities regulatory authority rules regarding obtaining customer information.

For accounts existing on the effective date of the rule, the 36 month period would begin on the effective date of the rule amendment. If a customer's name, address, or investment objectives do not change within that 36 month period, the broker-dealer would have to furnish to the customer a copy of the customer's updated account record no later than 36 months from the effective date of the amendment. If a customer's name or address does change during the period, however, the broker-dealer would have to furnish to the customer a copy of the customer's updated account record within 30 days of the customer informing the broker-dealer of the change. In this situation, a new 36 month period would begin on the date

[13] *See* Sections 3(a)(18) and (21). *See also* Sections 3(a)(32) and 3(a)(45).

[14] The Commission has taken the position that independent contractors involved in the sale of securities on behalf of a broker-dealer (who are not themselves registered as broker-dealers) must be ''controlled by'' the broker-dealer, and, therefore, are associated persons of the broker-dealer. *See, e.g., In the Matter of William* v. *Giordano,* 61 S.E.C. Dkt. 345, Exchange Act Release No. 36742 (Jan. 19, 1996)(In finding that an officer of a broker-dealer firm failed reasonably to supervise an independent contractor, the Commission found that the independent contractor was an ''associated person'' of the firm within the meaning of Section 3(a)(18) of the Exchange Act). *See also* Letter from SEC Division of Market Regulation, to Gordon S. Macklin, NASD; Charles J. Henry, CBOE; Robert J. Birnbaum, AMEX; and John J. Phelan, NYSE, [1982–1983 Transfer Binder] Fed. Sec. L. Rep. (CCH) P77,303 at 78,116 (June 18, 1982); *Hollinger* v. *Titan Capital Corp.,* 974 F.2d 1564, 1572–76 (9th Cir. 1990), *cert. denied,* 111 S. Ct. 1621 (1991). A similar analysis would be applicable to other persons, such as consultants and franchisees, performing securities activities with or for the broker-dealer.

the updated information is furnished to the customer, provided, the entire account record is furnished to the customer. Likewise, any other subsequent change in the customer's name or address also would begin a new 36 month period.

For an account opened after the effective date of this rule amendment, the broker-dealer would be required to send an account record within 30 days of the opening of the account. Thereafter, the 36 month period would begin on the date the account is opened. Additionally, a new 36 month period would begin any time a broker-dealer furnishes a complete updated account record to a customer. Broker-dealers would be free, of course, to update account record information more frequently than the rule requires.

Reproposed Rule 17a–3(a)(16) would add a requirement that information be kept as to whether the customer is an associated person of a broker-dealer. If an account is a discretionary account, the record would have to contain the dated signature of each customer granting the discretionary authority over the account and the dated signature of each person to whom discretionary authority was granted. These requirements would assist examiners in identifying possible trading or sales practice violations, such as churning, trading ahead of customers, front-running, or possible manipulative activities involving controlled or nominee accounts.

The reproposed amendments would also require a broker-dealer to create a record indicating whether it has complied with applicable securities regulatory authority rules governing the information required when opening or updating a customer account.[15] This provision, for example, would apply to Exchange Act Rule 15g–9 which requires broker-dealers to follow certain procedures before effecting customer transactions in the penny stock market, Municipal Securities Rulemaking Board Rule G–8(a)(xi) which requires broker-dealers and municipal securities dealers to obtain certain customer information before effecting transactions in municipal securities, NASD Rule 3110 which requires broker-dealers to maintain certain customer account information, such as a customer's address and residence, NASD Rule 2860(b)(16) regarding the opening of options accounts, NASD Rule 2310 regarding information that must be obtained prior to making investment recommendations to customers, NYSE Rule 405 which requires NYSE members to use due diligence to learn the essential facts relative to every customer, and Chicago Board of Options Exchange Rule 9.7 which sets forth the requirements for opening a customer options account. This requirement would help the Commission staff and state securities regulators in reviewing for compliance with securities regulatory authority rules relating to customer information and sales practice violations. The Commission requests comment on whether there are other SRO or Commission rules relating to opening or updating customer accounts that would or should be included under this proposed recordkeeping requirement. Because many broker-dealers likely already keep such records, would this requirement impose any additional burden on broker-dealers? Are there any alternatives that would be less burdensome?

D. Customer Complaints

The Proposing Release would have required broker-dealers to maintain files of written materials relating to customer complaints and to make and keep written memoranda of oral customer complaints alleging certain types of fraud and theft. The reproposed amendments would not require broker-dealers to document oral complaints or require each local office to maintain a customer complaint file of all correspondence, memoranda, and other documents received in connection with the complaint. Instead, each broker-dealer would have to keep a record of written complaints against each associated person.[16] In addition, a broker-dealer would have to maintain for each local office a record of written complaints against each associated person that conducts business at that local office.[17] The records would have to include, among other things, a description of the nature of the complaint, the name of the complainant, and the disposition of the complaint. As an alternative to maintaining a record of each customer complaint, a broker-dealer may keep a copy of the written complaint along with a record of the disposition of the complaint. These complaint retention requirements would enable examiners to detect patterns of customer abuses, both within particular offices and firm wide.

Reproposed Rule 17a–3(a)(17)(ii) would require that broker-dealers create a record indicating that each customer has been notified of the address and telephone number of the department of the broker-dealer to which any complaints may be directed. This requirement would expand on an existing interpretation of the Commission's financial responsibility rules and the Securities Investor Protection Act of 1970, which states that, for purposes of custody of securities, for a broker-dealer to qualify as an introducing firm, its customers must be treated as customers of the clearing firm.[18] Furthermore, under that interpretation, the clearing firm must issue account statements directly to customers and each account statement must contain the name, address, and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries and complaints regarding the customer's account. This reproposed requirement would apply to all firms carrying or clearing customer accounts in addition to those firms in an introducing/clearing arrangement.

E. Other Required Records

The Proposing Release would have required broker-dealers to create commission and compensation records for each associated person. The reproposed amendments would require essentially the same information as originally proposed, but would allow broker-dealers greater flexibility in how they can retain the records.[19] For example, in lieu of retaining the individual compensation records, broker-dealers would be permitted to store electronically the data necessary to produce the records.[20] Broker-dealers that choose this option would be required to produce the records upon request. Additionally, the reproposed amendments would clarify that records must be kept for non-monetary as well as monetary compensation. This would assist examiners in detecting sales practice violations tied to a firm's compensation practices.

The Proposing Release would have required broker-dealers to produce reports to monitor unusual occurrences in customer accounts such as frequent trading, unusually high commissions, or an unusually high number of trade corrections or cancellations. The reproposed amendments would not require broker-dealers to make these types of reports, but instead, would require broker-dealers to retain these reports, if created, or be able to recreate them upon request.[21] Because this provision would now be a record

[15] Reproposed Rule 17a–3(a)(16)(ii).

[16] Reproposed Rule 17a–3(a)(17).

[17] *See* Reproposed Rule 17a–3(f).

[18] Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (Dec. 2, 1992).

[19] Reproposed Rule 17a–3(a)(18).

[20] *See* Reproposed Rule 17a–3(f).

[21] Reproposed Rule 17a–4(b)(11).

retention requirement, it has been moved to Rule 17a–4. These requirements would assist examiners in identifying violations such as churning and unauthorized trading. The Commission requests comment on whether the requirement that these reports be kept for three years is appropriate.

F. Local Office

The definition of a local office is significant because broker-dealers must create records regarding activities in each local office and maintain a copy of certain records at that local office. This section discusses the reproposed definition of local office, the records that would be required to be maintained at each local office, alternative means of record retention for local offices, and state record depositories for those offices that do not qualify as local offices.

1. Definition of Local Office

The reproposed amendments would modify the definition of ''local office'' to include locations where two or more associated persons regularly conduct a securities business.[22] This definition has been modified from the Proposing Release, which would have included one-person offices in the definition, primarily in response to comments from broker-dealers that have many one-person offices or have associated persons who work from their homes. In these instances, records currently are stored at centralized locations maintained by the broker-dealers. Commenters stated that requiring records to be maintained at a one-person office or at an associated person's home would be extremely burdensome and could interfere with a broker-dealer's supervisory duties. By reproposing the definition of local office to include an office with two or more associated persons, the Commission has attempted to eliminate those situations in which a broker-dealer has minimal presence at a particular location, such as one associated person at a bank branch, while still providing securities regulatory authorities with local access to office records of a broker-dealer.

The Commission requests comment on whether, and if so, how many and why, a higher number of associated persons would be appropriate for the definition of local office. The Commission requests commenters to provide, if applicable, information on the number of offices in each state that would fall within the reproposed definition of a local office, the number of offices that would fall within the definition suggested by the commenter, and the total number of offices for that broker-dealer firm. Commenters also should specify what percentage of the firm's business is conducted at the local offices as defined under the reproposed amendments and under any alternative definitions suggested by the commenter.

2. Local Office Records

The reproposed amendments would require broker-dealers to make and keep separately for each local office records including blotters, broker and dealer order tickets, customer account records, customer complaints, evidence of compliance with securities regulatory authority rules, a list of state record depositories, names of persons capable of explaining the records, and names of any principals responsible for establishing policies and procedures, and records relating to the associated persons at each local office including employment agreements, identification numbers, compensation agreements, sales records relating to associated person compensation, and chronological sales records.[23] Keeping these records regarding each local office would assist securities regulators by enabling them to conduct focused localized examinations of particular offices and identify abusive activities that may be isolated to that office.

3. Record Retention at Local Offices

The reproposed amendments would require broker-dealers to make available at the respective local office certain records, including blotters of the local office's activities, memoranda of brokerage orders and dealer transactions, customer account records, customer complaints, and associated person records (collectively ''Local Office Records'').[24] The Commission is now proposing that Local Office Records be kept at the local office for the most recent one year period. Requiring a year's worth of Local Office Records at the local office should provide securities regulators with sufficient records to conduct examinations of local offices while not imposing unnecessary burdens on broker-dealers. After a year, broker-dealers would still be required to keep Local Office Records at their headquarters office or some other centralized location, subject to the accessibility requirements of Rules 17a–4(a) and (b).

The Commission is seeking comment on whether state securities regulators should have authority to waive the requirement that a broker-dealer keep Local Office Records at local offices within their respective states. The Commission also seeks comment on whether the reproposed record retention period of one year for local offices is appropriate.

4. Alternative Means of Record Retention

The Commission recognizes that some broker-dealers have recordkeeping systems that are more technologically advanced than others. These systems should enable broker-dealers to provide securities regulators with records at a local office in a timely manner without actually keeping the records at a local office. Therefore, the Commission is proposing an alternative means for satisfying the local office recordkeeping requirements. A broker-dealer's capability to produce printed copies of Local Office Records in a local office the same day the request for the records is made, or within a reasonable time under certain unusual circumstances, would satisfy the local office recordkeeping requirements.[25] By proposing an unusual circumstance exception, the Commission is addressing situations in which the broker-dealer has made a good faith effort to produce the records, but meets an unexpected delay in the production of the records. For example, the broker-dealer may experience a computer communication failure that cannot be immediately rectified by a local office. In contrast, the absence of a person authorized by the broker-dealer to deliver the records would not be an acceptable reason for delaying delivery of the requested records.

5. Promptly Furnishing Records at Local Offices

As proposed, the definition of the term ''promptly'' would have specified that requested records must be produced immediately for records located in the office where a request is made and within three business days for records that are not located in the office. These amendments were proposed so that securities regulators would have prompt access to records while they were conducting examinations at local offices. The reproposed amendments have been modified to reduce the burden that the proposed amendments would have placed on broker-dealers by allowing broker-dealers to use the alternative means of record retention discussed above.[26]

[22] Reproposed Rule 17a–3(g)(1).

[23] Reproposed Rule 17a–3(f).

[24] Reproposed Rule 17a–4(k).

[25] Reproposed Rule 17a–4(k)(1).

[26] *Id.*

G. State Record Depositories for Offices Not Meeting the Local Office Definition

The reproposed rules modify the proposed definition of local office to include offices with two or more associated persons. As to offices with only one associated person, the Commission is reproposing that those records may be stored at a state record depository. The state record depository would have to be located in the same state in which the office (or offices) not meeting the definition of local office is located. Further, with respect to an associated person who works out of more than one office, a state record depository would have to be located in each state in which the associated person conducts business. The Commission recognizes that this may place an additional burden on some broker-dealers; however, the Commission believes that to support examinations by state securities regulators, these associated person records must be available in the state in which that person is active. The Commission requests comment on whether, to what extent, and under what circumstances a state should be permitted to waive the state record depository requirement for broker-dealers conducting business in its state.

H. Records Regarding Approval of Communications

The proposed amendments would have required a record be kept indicating whether outgoing communications had been approved by a principal. The reproposed amendments modify that proposal to require that a broker-dealer retain any written approvals of outgoing communications sent and any written procedures it uses for reviewing outgoing communications. This change reflects the recent amendments to SRO rules which permit member firms to establish reasonable procedures for reviewing a registered representative's communications with the public.[27] The Commission also is proposing to add a requirement that broker-dealers maintain a record of any written procedures for reviewing marketing materials and a record listing each principal of a broker-dealer responsible for establishing policies and procedures to ensure compliance with applicable regulations of a securities regulatory authority that require approval of a record by a principal.[28] These requirements are designed to allow easier examination for sales practice abuses, such as unauthorized trading, suitability, churning, and other misrepresentations.

I. Audit and Examination Reports

The proposed amendments would have required broker-dealers to keep for at least three years all audit or examination reports prepared by a person other than the broker-dealer. Several commenters stated that this requirement is not warranted because it might discourage self-critical evaluations of a firm's business, particularly if the firm would be required to share the report with regulators that may not have authority to protect the confidentiality of the reports. In light of this, the Commission is reproposing the requirement that each broker-dealer keep for three years all reports requested or required by a securities regulatory authority and any securities regulatory authority examination reports.[29] This requirement would help avoid unnecessary duplication in examinations. The Commission requests comment on whether there are any reasons why broker-dealers should not be required to keep such reports (for example, confidentiality concerns arising from particular state law requirements).

J. Technical Amendments

On February 5, 1997, the Commission amended Rule 17a–4 to allow broker-dealers to employ, under certain conditions, electronic storage media to maintain its records.[30] The Commission is now proposing technical amendments to that rule.[31] The Electronic Storage Media Release provided that a broker-dealer that employs micrographic or electronic storage media must be ready at all times to immediately provide a facsimile enlargement upon request by the Commission or its representatives.[32] It also provided that for a broker-dealer that uses electronic storage media, a third party download provider must file undertakings with that broker-dealer's designated examining authority indicating that it will furnish promptly to the Commission, its designees or representatives, the information necessary to download information kept on a broker-dealer's electronic storage media.[33] Because SROs and state securities regulators are neither representatives nor designees of the Commission but, to the extent that they have jurisdiction over the broker-dealer serviced by the third party download provider, are organizations that should have access to facsimile enlargements and download information, the Commission is proposing technical amendments to provide them with access to these records.

IV. General Request for Comments

The Commission invites interested persons to submit written comments on all the reproposed amendments. Also, the Commission specifically requests comments concerning the definition of local office; the one year record retention period for local office records; and the retention and production of external audit, examination, and consulting reports.

The Commission requests comment regarding whether there are alternative books and records requirements that would facilitate examination of local offices and review of sales and trading practices. Are there any other records, in addition to compensation records, that the Commission should require broker-dealers to retain that would show sales incentives?

Is it necessary for Commission rules to also provide for state regulator access to books and records? Are there other measures the Commission could undertake to promote cooperation and coordination with state securities regulators regarding examinations and enforcement actions regarding broker-dealers? Are there alternatives to the local office requirements that would similarly expedite examinations away from a broker-dealer's home office?

With respect to the proposed requirement that broker-dealers be able to demonstrate compliance with certain SRO and state securities regulatory requirements, is there an alternative way for securities regulators to obtain this information? Are there other types of records that would contain information that securities regulators may use to identify potential regulatory concerns?

V. Effects on Efficiency, Competition, and Capital Formation

Section 23(a) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider any impact on competition and to not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the Act.[34] Pursuant to Section 3(f) of the Exchange Act, when the Commission

[27] *See* Exchange Act Release No. 39510 (Dec. 31, 1997), 63 FR 1131 (Jan. 8, 1998) and Exchange Act Release No. 39511 (Dec. 31, 1997), 63 FR 1135 (Jan. 8, 1998).

[28] Reproposed Rule 17a–4(b)(10).

[29] Reproposed Rule 17a–4(e)(5).

[30] Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997) (''Electronic Storage Media Release'').

[31] Rule 17a–4(f).

[32] *See* Rule 17a–4(f)(3)(i).

[33] *See* Rule 17a–4(f)(3)(vii).

[34] *See* 15 U.S.C. 78w(a)(2).

considers whether an action is necessary or appropriate in the public interest, the Commission considers whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. The Commission is considering the reproposed amendments to Rules 17a–3 and 17a–4 in light of these standards, and the Commission believes that any burden imposed by the reproposed amendments should be justified by the enhanced investor protection described above. In addition, by improving examination capabilities, the reproposed amendments should improve investor confidence in broker-dealer firms and help maintain fair and orderly markets. The requirements would apply to all broker-dealers that conduct business with the general public. Larger broker-dealers would have correspondingly greater obligations under the amendments. Accordingly, any burden on broker-dealer competition should be slight, especially in light of the significant regulatory benefits and investor protection purposes discussed above. The Commission solicits comment on any effect on efficiency, competition, or capital formation the reproposed amendments may have.

VI. Costs and Benefits of the Proposed Amendments and Their Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the reproposed amendments to Rules 17a–3 and 17a–4, commenters are requested to provide information relating to costs and benefits associated with any of the proposals herein.

The requirements of reproposed rules 17a–3 and 17a–4 are discussed together rather than separately because the underlying purposes for both making and keeping the reproposed records are so closely related. However, because the Commission requests specific comment on the costs and benefits, including specific estimates of hour and dollar burdens that may result from these reproposed amendments, commenters may wish to discuss each rule and the subparts of each rule individually.

A. Benefits

The reproposed amendments should result in increased efficiency and effectiveness of broker-dealer examinations especially with respect to local offices. The enhanced recordkeeping requirements would also provide critical information necessary for securities regulatory authorities to discover and take appropriate action for various securities violations, particularly, sales practice violations.

Generally, the reproposed amendments would require additional information in four main areas including (1) customer information, (2) associated person information, (3) transaction information (*i.e.*, purchases and sales), and (4) local office information. The reproposed rules relating to additional customer information (*i.e.*, the account record) would provide a clear and relatively current record of customer information, including a customer's financial profile and investment objectives. This record would provide securities regulators with information to enable them to determine whether transactions in particular securities were suitable for a customer.

The reproposed amendments relating to associated person information can be further broken down into two categories including compensation records and complaint records organized according to associated person. First, the compensation records would help provide securities regulators with insight into why associated persons may have conducted certain transactions. For example, the compensation records would allow securities regulators to determine whether financial or other incentives existed that may have led an associated person to engage in excessive transactions. Second, the complaint records organized according to registered representative would allow securities regulators to determine whether an associated person has engaged or is continuing to engage in certain securities violations such as sales practice abuses.

The reproposed amendments relating to transactions would require broker-dealers to include on order tickets, among other things, the time the order was received, the identity of the associated person responsible for the account, and the identity of any other person who accepted or entered the order. First, the requirement that an order ticket note the time the order was received would allow securities regulators to determine whether the broker-dealer executed the transaction in a timely manner and in compliance with applicable regulations. Second, indicating on the order ticket the identity of the associated person responsible for the account as well as the identity of any other person who entered or accepted the order would provide securities regulators with insight into a variety of abusive activities. For example, securities regulators would be better able to identify situations in which a person who was barred from the industry was, nevertheless, continuing to associate with a broker-dealer by entering orders under another person's name. Additionally, the records could help reveal that a broker-dealer was engaging in boiler room activities in situations in which numerous associated persons were accepting and entering orders under one associated person's name.

With respect to local office information, the requirement that certain records be kept for each local office would allow securities regulators to conduct a focused localized exam of a particular office and identify abusive activities that may be isolated to that office. Further, requiring broker-dealers to store certain records at local offices would allow securities regulators to conduct more effective and thorough examinations because they would be able to conduct the examinations on-site where they could review the pertinent records and interview various employees regarding the contents of those records. Additionally, making the records available at the local office is important to reduce the potential for alteration or fabrication of records when requested. Finally, requiring broker-dealers to maintain or make available particular records at local offices would help facilitate examinations by state securities regulators because the records would be located within that regulator's jurisdiction.

B. Costs

Many of the records required under the reproposed amendments already are required under SRO rules, thus, tempering the impact of the reproposed amendments on broker-dealers. However, the Commission recognizes that compliance with the reproposed rules may require broker-dealers to make certain adjustments to their current systems and methods of record creation and storage.

The Commission believes that the bulk of the additional costs of the reproposed amendments would result from three areas: (1) the requirement that account records be updated; (2) the requirement that certain records regarding local offices be made; and (3) the requirement that records be stored at or made available at local offices or state record depositories.[35] Accordingly, the Commission has included certain provisions in the reproposed amendments that should lessen the impact on broker-dealers. For example, rather than storing hard copies of certain records, local offices may use a

[35] The Paperwork Reduction Act section of this release contains additional information relating to costs.

system, which could range from ordinary E-Mail to a Local Area Network system to an intranet system, capable of producing printed copies of the records at the local office. The Commission believes that many broker-dealers already have in place systems that are capable of transmitting the information between offices immediately or on the same business day. This provision should provide securities regulators with timely access to records without requiring broker-dealers to actually produce and store in hard copy format every record required under the reproposed rules. The Commission seeks comment on alternative systems or methods of storing records or providing local offices and state record depositories with timely access to records.

In some instances, the reproposed amendments provide that broker-dealers may choose between alternative methods of recordkeeping. For example, the reproposed amendments relating to the contents of an order ticket would add the requirement that order tickets contain, among other things, the identity of each associated person and any other person who entered or accepted the order. However, if the broker-dealer's system is incapable of receiving an entry for any other person or if the alteration to the system would be costly, the broker-dealer would not have to alter its system; rather, the broker-dealer may make a separate record of the additional persons who enter or accept orders.

VII. Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') concerning the reproposed amendments. The IRFA notes that the purpose of the reproposed amendments is to enhance the ability of securities regulators to protect investors through more effective and efficient examinations and enforcement proceedings. The Commission believes that the reproposed amendments are necessary to ensure that registered broker-dealers keep books and records that are sufficient to permit securities regulators to conduct complete sales practice and operational examinations. The IRFA further states that the reproposed amendments would affect all broker-dealers, including the approximately 1,389 small broker-dealers, but notes that the requirements of the reproposed amendments were designed to minimize additional burdens. It also states that the reproposed amendments may require broker-dealers to adjust their record making and keeping practices and to update certain customer information records every 36 months. The IRFA states that no federal securities laws duplicate, overlap, or conflict with the reproposed amendments and that the Commission does not believe that any less burdensome alternatives are available to accomplish the objectives of the reproposed amendments.

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. If the reproposed amendments are adopted, written comments will be considered in preparation of the Final Regulatory Flexibility Analysis. Comments will be placed in the same public file as that designated for the reproposed amendments. A copy of the IRFA may be obtained by contacting Deana A. La Barbera, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, D.C. 20549, (202) 942–0734.

VIII. Paperwork Reduction Act

Certain provisions of the reproposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[36] The Commission has submitted the reproposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 under the title ''Reproposed Books and Records Amendments.''

A. Collection of Information Under Reproposed Books and Records Amendments

As discussed previously in this release, the Reproposed Books and Records Amendments would require registered broker-dealers to maintain additional records with respect to purchase and sale documents, customer information, associated person information, customer complaints, and certain other matters.

B. Proposed Use of Information

The information collected pursuant to the Reproposed Books and Records Amendments would be used by the Commission, self-regulatory organizations, and other securities regulatory authorities for examinations and enforcement proceedings regarding broker-dealers and associated persons. No governmental agency would regularly receive any of the information described above. Instead, the information would be stored by the registered broker-dealer and made available to the various securities regulatory authorities for examinations and enforcement proceedings. To comply with the reproposed amendments that require broker-dealers to update customer account records at least every 36 months, broker-dealers would have to furnish their customers with a copy of the account record. This requirement and the estimated burden associated with it are discussed in detail in section D below.

C. Respondents

The Reproposed Books and Records Amendments would apply to all the approximately 7,769 active broker-dealers[37] that are registered with the Commission. Most of the provisions of the Reproposed Books and Records Amendments would apply only to the approximately 5,400 broker-dealers that conduct business with the general public; this is because most of the provisions relate to a broker-dealer's and its associated persons' dealings with customers (*e.g.*, the requirement that broker-dealers update customer account records).

D. Total Annual Reporting and Recordkeeping Burden

The hour burden of the Reproposed Books and Records Amendments would vary widely because of differences in the levels of activities of the respondents and because of differences in the current recordkeeping systems of the respondents. Therefore, the estimates in this section are based on averages among the various types and sizes of broker-dealer firms. Most of the requirements of the Reproposed Books and Records Amendments involve collections of information that typical broker-dealers already maintain under customary and usual business practices or in compliance with SRO rules.

The reproposed amendments modify Rule 17a–3 by, among other things, requiring broker-dealers to update customer account records at least every 36 months. Broker-dealers currently maintain approximately 60,000,000 customer accounts. Because the account records must be updated at least once every 36 months, the Commission estimates that, on average, the account records of one-third of the total accounts (*i.e.* 20,000,000) would have to be updated each year. To comply with this

[36] 44 U.S.C. 3501 *et seq.*

[37] Of approximately 8,500 broker-dealers registered with the Commission, approximately 450 are not yet active because their registration is pending SRO approval and approximately 300 are inactive because they have ceased doing a securities business and have filed a Form BDW with the Commission.

requirement, broker-dealers would have to furnish customers with the existing account record and request that the customer make any necessary changes. However, the Commission believes that not every account record will be changed in response to the broker-dealer's request for updated information because the account record may still be current or the customer may elect not to respond. The Commission estimates that approximately 10% of the requests for updated information will result in changes to the record resulting in 2,000,000 (10% of ⅓ of total customer accounts) updated account records each year. The Commission estimates that it will take, on average, 10 seconds to furnish the account record to each customer. The Commission further estimates that it will take, on average, five minutes for a broker-dealer to update each account record. This estimate takes into account the amount of time it would take to receive the returned data and input any changes into the account record. Additionally, this time estimate takes into account that certain SRO rules already require broker-dealers to maintain current information about their customers and that broker-dealers maintain current account record information in the ordinary course of business.

Therefore, the Commission estimates that the requirement that broker-dealers update account records would require approximately 222,223 hours each year; this is derived from 55,556 hours to furnish the account records to customers (20,000,000 account records × 10 seconds / 60 seconds / 60 minutes) plus 166,667 hours each year to receive and input the updated information (2,000,000 account records × 5 minutes / 60 minutes)[38]

In addition to the account record updating requirement, the Reproposed Books and Records Rules would require broker-dealers to keep certain records regarding their associated persons, including agreements pertaining to the associated person's relationship with the broker-dealer, compensation arrangements, identification numbers, the office at which each associated person's records are stored,[39] each associated person's compensation for each transaction,[40] and a chronological sales record.[41] With the exception of the compensation record and chronological sales record, the records are the type of records that would be updated infrequently. Additionally, the Commission believes that all these records are the type of records that broker-dealers would keep in the ordinary course of business. Therefore, the Commission estimates that, on average, these records would require a broker-dealer to spend approximately 30 minutes each year to ensure that it is in compliance with the reproposed amendments.

The reproposed amendments also would require broker-dealers to make records which indicate that they have complied with any applicable regulations of securities regulatory authorities,[42] and which list persons who can explain the information in the broker-dealer's records,[43] each principal responsible for establishing compliance policies and procedures,[44] and each office designated as a state record depository.[45] The Commission believes that the information required under each of these rules would be readily available to broker-dealers and is the type of information that would change infrequently. Therefore, the Commission estimates that, on average, a broker-dealer would spend approximately 10 minutes each year to ensure that it is in compliance with these requirements.

The reproposed amendments also would require that broker-dealers keep a record of customer complaints.[46] Broker-dealers already are required to keep this information under existing SRO rules; however, under the reproposed rules, the record must be made available at the local office or state record depository. The Commission believes that because broker-dealers already maintain these records, any additional burden resulting from this requirement would be nominal. Therefore, the Commission estimates that, on average, the burden would be 20 minutes per broker-dealer each year to ensure that it is in compliance with this rule.

The reproposed amendments relating to order tickets would require that broker-dealers note the time the order was received and the name of any person other than the associated person responsible for the account who accepted or executed the order.[47] The Commission believes that, in the ordinary course of business, most broker-dealers already note on the order ticket the time the order was received; therefore, this requirement would not impose an additional burden on broker-dealers.

The degree of the burden imposed by the requirement that any additional person be noted on the order ticket depends largely upon the business practices of the individual firms and their current recordkeeping systems; therefore, it is difficult for the Commission to provide an accurate estimate of the burden associated with this requirement. The Commission believes, however, that any additional burden would be nominal because the requirement may be satisfied by a minor notation on the order ticket or on a separate record.

In total, the Commission estimates that compliance with the Reproposed Books and Records Rules for Rule 17a–3 would require an additional 229,992 hours per year ((222,223 hours (annualized account record updating) + 7,769 hours[48] (one hour per broker-dealer each year for the balance of the additional rules)). Therefore, the current OMB inventory of 1,941,062 hours for Rule 17a–3 would increase by 229,992 hours to 2,171,054 hours.

The Reproposed Books and Records Rules would modify Rule 17a–4 by requiring broker-dealers to maintain additional books and records, including materials used by a broker-dealer to offer or sell securities, copies of reports produced to review activity in customer accounts, and a record listing all persons who are qualified to explain a broker-dealer's books and records. The reproposed amendments to Rule 17a–4 also would require broker-dealers to make available certain records at the local offices or state record depositories. The reproposed amendments provide that broker-dealers may retain the records in a system capable of producing the records upon request, which should minimize additional record retention burdens on broker-dealers. Also, as discussed above, most of the additional records already are maintained by the broker-dealers; therefore, the majority of the additional burden would result from the requirement that broker-dealers retain

[38] The Commission staff estimates that the approximate administrative and labor costs to broker-dealers to comply with this requirement would be $25 per hour (based on an annual salary of $52,000) resulting in a total annual cost of $5,555,575 (based on $25 per hour multiplied by 222,223 burden hours). This estimate does not include any systems costs.

[39] Reproposed Rule 17a–3(a)(12).

[40] Reproposed Rule 17a–3(a)(18).

[41] Reproposed Rule 17a–3(a)(20).

[42] Reproposed Rule 17a–3(a)(19).

[43] Reproposed Rule 17a–3(a)(21).

[44] Reproposed Rule 17a–3(a)(22).

[45] Reproposed Rule 17a–3(a)(23).

[46] Reproposed Rule 17a–3(a)(17).

[47] Reproposed Rules 17a–3(a)(6) and (a)(7).

[48] The Commission staff estimates that the approximate cost to broker-dealers to comply with this requirement would be $48.08 per hour (based on an annual salary of $100,000) including the value of professional staff compensation and related overhead resulting in a total annual cost of $373,534 (based on $48.08 per hour multiplied by 7,769 burden hours). This estimate does not include any systems costs.

records at local offices or state record depositories.

Based on the information above, the Commission estimates that, on average, each broker-dealer would spend one business day each year to ensure that it is in compliance with the reproposed amendments to Rule 17a–4 and to ensure that the records are available at local offices and state record depositories. Therefore, the current OMB inventory for Rule 17a–4 of 2,127,125 hours would be increased by 62,152 hours (7,769 active broker-dealers × 8 hours) resulting in a total of 2,189,277 hours.[49]

E. General Information About the Collection of Information

The collection of information under the Reproposed Books and Records Amendments would be mandatory. The information collected pursuant to Rules 17a–3(a)(17), (21), (22), and (23) would be retained for six years. The information collected pursuant to Rules 17a–3(a)(18), (19), and (20), 17a–4(b) (4), (7), (10), and (11), and 17a–4(e)(5) would be retained for three years. The information collected pursuant to Rule 17a–3(a)(16) would be retained for six years after the closing of the related customer's account. The information collected pursuant to Rule 17a–4(d) would be retained for the life of the enterprise or any successor enterprise. The information collected pursuant to Rule 17a–3(a)(20) would be retained for three years. The information collected pursuant to Rule 17a–4(e)(6) would be retained for three years after the date of the termination of use of the information. In general, the information collected pursuant to the Reproposed Books and Records Amendments would be held by the respondent. The Commission, self-regulatory organizations, and other securities regulatory authorities would only gain possession of the information upon request. Any information received by the Commission pursuant to the Reproposed Books and Records Amendments would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

F. Request for Comment

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

(i) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the Commission, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements 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, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–2, Washington, D.C. 20549, and refer to File No. S7–26–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the **Federal Register**, therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication.

IX. Statutory Analysis

The amendments are proposed pursuant to the authority conferred on the Commission by the Exchange Act, including Sections 17(a) and 23(a).

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Title 17 Chapter II of the Code of Federal Regulation 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, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17a–3 is amended by revising paragraphs (a)(6), (a)(7), and (a)(12)(ii), and adding paragraphs (a)(12)(iii), (a)(12)(iv), (a)(12)(v), (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), (a)(22), (a)(23), (f) and (g) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(6) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the time of execution or cancellation, to the extent feasible; and, except as otherwise provided in this paragraph, the identity of each associated person responsible for the account and any other person who entered or accepted the order on behalf of the customer. If a person other than the associated person responsible for the account entered the order into an electronic system that generates the required memorandum and the system is not capable of receiving an entry of the identity of any person other than the responsible associated person, the member, broker or dealer shall create a separate record which identifies each other person upon request. An order entered pursuant to the exercise of discretionary power by the member, broker or dealer, or associated person or other employee thereof, shall be so designated. The term *instruction* shall include instructions between partners and employees of a member, broker or dealer. The term *time of entry* shall mean the time when the member, broker or dealer transmits the order or instruction for execution.

(7) A memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received showing the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the time of execution or cancellation, to the extent feasible; and, except as otherwise provided in this paragraph, the identity of each associated person responsible for the account and any other person

[49] The Commission staff estimates that the approximate professional labor costs to the broker-dealer industry to comply with this requirement would be $48.08 per hour (based on an annual salary of $100,000) resulting annual cost of $2,988,268 (based on $48.08 per hour multiplied by 62,152 burden hours). This estimate does not include any systems costs.

who entered or accepted the order on behalf of the customer. If a person other than the associated person responsible for the account entered the order into an electronic system that generates the required memorandum and the system is not capable of receiving an entry of the identity of any person other than the responsible associated person, the member, broker or dealer shall create a separate record which identifies each other person upon request. Orders entered pursuant to the exercise of discretionary power by the member, broker or dealer, or associated person or other employee thereof, shall be so designated. The term *instruction* shall include instructions between partners and employees of a member, broker or dealer. The term *time of entry* shall mean the time when the member, broker or dealer transmits the order or instruction for execution.

* * * * *

(12) * * *

(ii) A record of all agreements pertaining to the relationship between each associated person and the member, broker or dealer.

(iii) A record containing a summary of each associated person's compensation arrangement or plan with the member, broker or dealer, including commission schedules.

(iv) A record identifying any internal identification number assigned to each associated person by a member, broker or dealer and the Central Registration Depository number, if any, assigned to each associated person.

(v) A record listing each associated person on behalf of the member, broker or dealer including the office of the member, broker or dealer out of which the associated person works and the local office or state record depository the records pertaining to that associated person are preserved pursuant to § 240.17a–4.

* * * * *

(16) For each account that has a natural person as the beneficial owner (including a joint account with one or more natural persons as the beneficial owners):

(i)(A) An account record containing the customer's name, Social Security number (or other tax identification number), address and telephone number, date of birth, marital status, number of dependents, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income and net worth (excluding value of primary residence), and investment objectives or risk tolerance. In the case of a joint account, the information shall be included for each individual on the joint account. The account record shall indicate that it has been approved by the associated person responsible for the account and by a principal of the member, broker or dealer. If an account is a discretionary account, the record must contain the dated signature of each customer granting the discretionary authority and the dated signature of each person to whom discretionary authority was granted.

(B)(*1*) Every member, broker or dealer shall furnish to each customer within 30 days of opening the account and thereafter at least once every 36 months (at intervals no greater than 36 months) a copy of the customer's account record or an alternate document with all information required by paragraph (a)(16)(i)(A) of this section. For an account existing on [the effective date of the final rule], the initial 36 month period shall begin on [the effective date of the final rule]. For an account opened after [the effective date of the final rule] the initial 36 month period shall begin on the day the initial account record is sent to the customer

(*2*) For each account record of a customer updated to reflect a change in the name, address, or investment objectives of the customer, a member, broker or dealer shall furnish to that customer, no later than 30 calendar days after the date it received notice of the change of name, address, or investment objectives, a copy of that customer's account record or an alternate document containing all required information set forth on the account record. If the account is updated to reflect a change of address, the member, broker or dealer shall furnish the account record to the new address and a notice of the change of address to the old address.

(*3*) The account record or alternate document furnished to the customer shall include or be accompanied by a prominent statement advising the customer that, if any information on the account record or alternate document is incorrect, the customer should mark any corrections and return the account record or alternate document to the member, broker or dealer. Within 30 calendar days of receipt from a customer any corrections or changes to the contents of an account record or alternate document, a member, broker or dealer shall furnish a copy of the revised account record or alternate document to the customer and to the associated person who is responsible for that customer's account.

(C) The neglect, refusal, or inability of a customer to provide or update any required information for the customer's account record shall excuse the member, broker or dealer from obtaining the required information. The member, broker or dealer shall make a record of its failure to obtain the required information when opening the account. The record shall contain an explanation of the neglect, refusal, or inability of the customer to provide the required information and the name of the person that recorded the neglect, refusal, or inability on behalf of the member, broker or dealer.

(ii) A record, which need not be separate from the account record, for each account opened or updated after [the effective date of the final rule] indicating compliance with any applicable regulations of a securities regulatory authority that require certain information about a customer be obtained when opening or updating a customer account. This record shall include the date the member, broker or dealer fulfilled its obligations regarding the opening or updating of the customer account under any applicable regulations of a securities regulatory authority.

(iii) A record indicating that the customer was furnished with a copy of any written agreement pertaining to the customer's account. If a member, broker or dealer furnishes to a customer a copy of any written agreement that does not include the customer's signature, upon request, the customer shall be furnished with a signed copy of the written agreement pertaining to the customer's account.

(17)(i) A record as to each associated person of each written customer complaint received by the member, broker or dealer concerning that associated person. The record shall include, at least, the complainant's name, address, and account number; the date the complaint was received; the name of any associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a member, broker or dealer may maintain a copy of the original complaint along with a record of the disposition of the complaint.

(ii) A record indicating that each customer of the member, broker or dealer has been provided with a notice containing the address and telephone number of the department of the member, broker or dealer to which any complaints may be directed.

(18) A record as to each associated person listing all purchases and sales of securities for which the associated person was compensated, the amount of compensation (whether monetary or

nonmonetary), and the specific security involved. To the extent that compensation is based on factors other than remuneration per trade, such as a total production credit or bonus system, the member, broker or dealer must be able to demonstrate and to document upon request the method by which the compensation is determined. In lieu of making these records, a member, broker or dealer may maintain, through electronic means, the data necessary to promptly create the records upon request.

(19) A record indicating compliance with any applicable regulations of a securities regulatory authority which require that materials used by a member, broker or dealer or any associated person to offer or sell any security have been approved by a principal. These materials may include advertisements, marketing materials, sales scripts, and other paper or electronic material, such as audio or video tapes. This provision does not apply to those materials used only for internal purposes.

(20) A record as to each associated person listing chronologically all customer purchase or sale transactions for which the associated person entered the orders or was primarily responsible for the customer's account.

(21) A record listing all persons who, without delay, can explain the information contained in the records (or type of records) required pursuant to this section and those records required to be retained pursuant to § 240.17a–4.

(22) A record listing each principal of a member, broker or dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable regulations of a securities regulatory authority that require acceptance or approval of a record by a principal.

(23) A record listing each office of a member, broker or dealer indicating whether the office is a local office or has been designated as a state record depository, and listing each associated person working out of or storing records at that office.

* * * * *

(f) Every member, broker or dealer shall make and keep current, separately for each office, the books and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), (a)(22) and (a)(23) of this section reflecting the activities of that office. This requirement may be satisfied by demonstrating that the data is maintained in a system which is capable of promptly generating the records for each office upon request.

(g) When used in this section:

(1) The term *local office* means any location where two or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or otherwise soliciting transactions or accounts for a member, broker or dealer.

(2) The term *principal* means any individual registered with the National Association of Securities Dealers Regulation, Inc. as a principal or branch manager of a member, broker or dealer.

(3) The term *securities regulatory authority* means the Commission, any state securities regulatory agency authorized by law to examine members, brokers or dealers subject to its jurisdiction, or any self-regulatory organization.

3. Section 240.17a–4 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1), (b)(4), and (b)(7), the introductory text of paragraph (b)(8), and paragraphs (d), and (j), and adding paragraphs (b)(10), (b)(11), (e)(5), (e)(6), (k) and (l) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

(a) Every member, broker and dealer subject to § 240.17a–3 shall preserve for a period of not less than six years (the first two years in an easily accessible place, subject to the provisions set forth in paragraph (k) of this section) all records required to be made pursuant to § 240.17a–3(a) (1), (2), (3), (5), (16), (17), (21), (22) and (23).

(b) Every member, broker and dealer subject to § 240.17a–3 shall preserve for a period of not less than three years (the first two years in an easily accessible place, subject to the provisions set forth in paragraph (k) of this section):

(1) All records required to be made pursuant to § 240.17a–3(a) (4), (6), (7), (8), (9), (10), (18), (19) and (20).

* * * * *

(4) Originals of all communications received and copies of all communications sent by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such. The member, broker or dealer shall also retain any written approvals of communications sent and any written procedures it uses for reviewing the communications received or sent by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such.

* * * * *

(7) All written agreements (or copies thereof) entered into by the member, broker or dealer relating to its business as such, including agreements with respect to any account.

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X–17A–5 (§ 249.617 of this chapter) Part II or Part IIA and in annual audited financial statements required by § 240.17a–5(d):

* * * * *

(10) All materials used by the member, broker or dealer or any associated person, to offer or sell any security, even if intended only for internal use. These materials include advertisements, marketing materials, sales scripts, and other paper or electronic materials, such as audio and video recordings. The member, broker or dealer shall also retain any written procedures for reviewing these materials.

(11) Copies of reports produced to review unusual activity in customer accounts. These reports include, but are not limited to, reports that identify exceptional numerical occurrences, such as frequent trading in customer accounts, unusually high commissions, or an unusually high number of trade corrections or cancelled transactions. In lieu of retaining copies of the reports, a member, broker or dealer may maintain, by electronic means, the data necessary to promptly create the reports upon request.

* * * * *

(d) Every member, broker and dealer subject to § 240.17a–3 shall preserve during the life of the enterprise and of any successor enterprise all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), all amendments to the Forms, all licenses or other documentation showing the member's, broker's or dealer's registration with state securities jurisdictions and self-regulatory organizations, and all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.

(e) * * *

(5) All reports requested or required by a securities regulatory authority and any securities regulatory examination reports until at least three years after the date of the report.

(6) All compliance, supervisory, and procedures manuals describing the policies and practices of the member, broker or dealer with respect to operations, compliance with all

applicable securities laws and regulations, and supervision of the activities of each natural person associated with the member, broker or dealer until at least three years after the termination of the use of each manual.

* * * * *

(j) Every member, broker or dealer subject to this section shall furnish promptly to a representative of the Commission legible, true, and complete copies of those records of the member, broker or dealer, that are required to be preserved under this section, or any other records of the member, broker or dealer subject to examination under Section 17(b) of the Act (15 U.S.C. 78q(b)) that are requested by the representative of the Commission.

(k) Records required to be preserved by the provisions of this section must be maintained at the headquarters office or other centralized location of a member, broker or dealer. In addition, records required to be maintained by § 240.17a–3(a)(1), (a)(6), (a)(7), (a)(12), (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), and (a)(22) and paragraphs (b)(4) and (e)(6) of this section which:

(1) Relate to a local office shall also be maintained at the local office as follows:

(i) The most recent one year period of the records pertaining to a local office shall be maintained at the local office of a member, broker or dealer; or

(ii) In lieu of maintaining records at the local office, a member, broker or dealer may comply with the local office record maintenance requirements of this section by having the capability of producing printed copies of the records at the local office during the same business day as the request for the records is made or, if unusual circumstances prevent the production of printed copies of the records within the same business day, with the permission of the securities regulator making the request, the records shall be made available within a reasonable time. This capability shall not be deemed to supersede paragraph (f) of this section.

(2) Relate to an office of a member, broker or dealer that does not meet the definition of local office under § 240.17a–3(g)(1), or relate to an associated person who works out of multiple offices of a member, broker or dealer, must be either maintained at the office, or aggregated with the records of one or more other such offices or associated persons at a state record depository designated by the member, broker or dealer if the following requirements are met:

(i) The state record depository, which may be another office of the member, broker or dealer, is located within the same state as the office that does not meet the definition of local office, and with respect to maintaining records for an associated person who works out of multiple offices, the state record depository is located in each state in which the associated person conducts its business; and

(ii) The records stored in the state record depository can be easily identified and accessed for each office that does not meet the definition of local office or for each associated person to the same extent as if each such office or associated person kept separate records in compliance with the local office recordkeeping requirements of this section.

(l) When used in this section:

(1) The term *local office* shall have the meaning set forth in § 240.17a–3(g)(1).

(2) The term *principal* shall have the meaning set forth in § 240.17a–3(g)(2).

(3) The term *securities regulatory authority* shall have the meaning set forth in § 240.17a–3(g)(3).

§ 240.17a–4 [Amended]

4. In § 240.17a–4, paragraph (f)(3)(ii) is amended by removing the phrase ''the Commission or its representatives'' and in its place adding ''the staffs of the Commission, any self-regulatory organization of which it is a member, or any state securities regulator having jurisdiction over the member, broker or dealer''.

5. In § 240.17a–4, paragraph (f)(3)(vii) is amended by:

a. Removing the phrase ''the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives,'' and in its place adding ''the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives, any self-regulatory organization of which it is a member, or any state securities regulator having jurisdiction over the member, broker or dealer,'';

b. Removing the phrase ''the Commission's or designee's staff'' and in its place adding ''the staffs of the Commission, any self–regulatory organization of which it is a member, or any state securities regulator having jurisdiction over the member, broker or dealer'';

c. Removing each place it appears the phrase ''the Commission's staff or its designee'' and in its place adding ''the staffs of the Commission, any self–regulatory organization of which it is a member, or any state securities regulator having jurisdiction over the member, broker or dealer''.

Dated: October 2, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27120 Filed 10–8–98; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD91

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Medical and Other Evidence of Your Impairment(s) and Definition of Medical Consultant

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise the Social Security and supplemental security income (SSI) disability regulations regarding sources of evidence for establishing the existence of a medically determinable impairment under title II and title XVI of the Social Security Act (the Act). We are doing this to clarify and expand the list of acceptable medical sources and to revise the definition of the term ''medical consultant'' to include additional acceptable medical sources.

DATES: To be sure that your comments are considered, we must receive them no later than December 8, 1998.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P. O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-Mail to ''regulations@ssa.gov,'' or delivered to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–5121. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of disability benefits to persons insured under the Act. Title II also provides,