

SUPPORTING STATEMENT
Rule 7d-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-7(d)) (the “Act” or “Investment Company Act”) requires an investment company (“fund”) organized outside the United States (“foreign fund”) to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d-1 (17 CFR 270.7d-1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company (“Canadian fund”) may request an order from the Commission permitting it to register under the Act. Although rule 7d-1 by its terms applies only to Canadian funds, funds in other jurisdictions generally have agreed to comply with the requirements of rule 7d-1 as a prerequisite to receiving an order permitting the fund’s registration under the Act.

The rule requires Canadian funds that propose to register under the Act to file an application with the Commission that contains various undertakings and agreements by the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

- (1) the fund must file with the Commission agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;
- (2) the fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file with the Commission an irrevocable designation of the fund's custodian in the United States as agent for service of process;
- (3) the fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;
- (4) the fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15 U.S.C. 77a-77z-3), and the Securities Exchange Act of 1934 (15 U.S.C. 78a-78mm), as applicable; and
- (5) the fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act, the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act)." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d-1 are associated with complying with the Act's provisions. These requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

2. Purposes of the Information Collection

The collection of information requirements (as well as other requirements) of rule 7d-1 are designed to assure that appropriate arrangements are in place to confirm the enforceability of the Act against the fund. Under international law, for example, it is uncertain whether the Commission or a fund's shareholders could enforce the Act's provisions against the fund and associated persons (that is, those persons in addition to the fund, such as the fund's service providers, required to meet the requirements of rule 7d-1) solely on the basis of the fund's registration under the Act. Thus, rule 7d-1 requires foreign funds to file an application containing certain undertakings and agreements that confirm that the Commission and the fund's shareholders will be able to enforce the provisions of the Act as a matter of contract right in the United States or Canada. The application itself allows Commission staff to determine whether to permit the applicant to register under the Act.

In addition, the rule's requirement to maintain records in the United States (which, without the requirement, could be available only in Canada or another foreign jurisdiction) facilitates routine inspections and any special investigations of the fund by Commission staff. The requirement to update the list of affiliated persons also assists the staff in monitoring the fund's relationships with affiliates.

3. Role of Improved Information Technology

Rule 31a-2(f) under the Investment Company Act permits funds to maintain many types of records (and produce them for the Commission's examination as necessary) on micrographic media, including microfilm, microfiche, or similar medium, or any electronic storage media, including any digital storage medium or system. Funds and

their advisers generally may keep records in the United States as required by rule 7d-1 in these forms.

The Commission's Electronic Data Gathering, Analysis and Retrieval system ("EDGAR") is designed to automate the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit many filings to the Commission electronically. Although EDGAR currently is limited to disclosure filings, EDGAR may be used in the future to obtain other types of information from sources outside the Commission, such as applications by Canadian or other foreign funds and updates of lists of affiliated persons, as required by Rule 7d-1.

4. Efforts to Identify Duplication

The requirement under rule 7d-1 to maintain original or duplicate books and records in the United States is intended to assure that the provisions of the Act can be enforced against a foreign fund. Without the requirement, records could be maintained only in Canada. The Commission's ability to examine those records would depend upon Canadian law. The inconvenience and expense of travel to Canada also could adversely affect enforcement of the Act.

5. Effect on Small Entities

The Commission does not believe that compliance with rule 7d-1 is unduly burdensome for large or small entities. The information collection requirements of the rule apply to all Canadian funds that seek the benefit of registration under the Act, whether or not they are small entities. The requirements establish the enforceability of the Act for all funds regardless of size, and in so doing, enable the Commission to fulfill its statutory mandate.

6. Consequences of Less Frequent Collection

Rule 7d-1's requirement that Canadian funds file an application that contains certain undertakings and agreements as a prerequisite to the fund's registration under the Act is not a recurring obligation. The rule also imposes requirements to maintain records in the United States, and to update lists of affiliated persons as changes occur. Without the rule's information collection requirements, the Commission could not determine whether the substantive provisions of the Act would be enforceable as a matter of contract right in the United States by the fund's shareholders or by the Commission.

On occasion, after a Canadian (or other foreign fund) has registered, it may file a supplemental application seeking special exemptive relief from provisions of the Act based on the fund's particular circumstances. Rule 7d-1 does not mandate these applications, which are submitted at a fund's discretion.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

By requiring funds to maintain records in the United States, rule 7d-1 effectively requires the fund to preserve these records either permanently or for six years after pertinent transactions, depending on the record. This requirement applies to the records of all registered funds, including any records maintained in Canada.¹

The Commission believes that the long-term retention of records in the United States is necessary to carry out its examination and enforcement responsibilities, and its mandate to ensure that the Act's provisions are legally enforceable. The Commission periodically inspects the operations of registered funds to ensure compliance with the rules and regulations under the Act; however, each fund may be inspected only at intervals of several years due to limits on the Commission's resources. Furthermore,

¹ 17 CFR 270.7d-1(b)(8)(iii).

Congress has placed no time limit on the prosecution of persons engaged in certain types of conduct that violate the securities laws. For these reasons, the Commission often needs information relating to events or transactions that occurred years ago. In section 31(a) of the Act [15 U.S.C. 80a-30(a)], Congress specifically authorized the Commission to require funds to “maintain and preserve” books and records “for such period or periods as the Commission may prescribe by rules.” Computerized record storage has made long-term retention of records less burdensome.

8. Consultation Outside the Agency

The Commission proposed rule 7d-1 for public comment before it was adopted on April 27, 1954. The requirements of the rule were formulated after extended discussions with Canadian funds that had applied for orders permitting registration before the rule was adopted. The Commission considered all comments and suggestions and determined to adopt the rule’s information collection requirements substantially as proposed. Subsequent amendments have not significantly altered the rule’s information collection requirements. The Commission requested public comment on the collection of information requirements in rule 7d-1 before it submitted this request for extension and approval to OMB. The Commission received no comments.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

The Commission believes that one fund is registered under the Act pursuant to rule 7d-1 and currently active. The burden hours under the rule associated with the fund's compliance with the Act's requirements are reflected in the information collection burdens applicable to those requirements for all registered funds.

Apart from requirements under the Act applicable to all registered funds, rule 7d-1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the fund's list of affiliated persons. The Commission staff estimates that the active registrant makes one response under the rule each year to update its list of affiliated persons.² Commission staff estimates that the response to update the list of affiliated persons requires 2 hours of compliance clerk time at a cost of \$56 per hour, for a total annual burden of 2 hours at a cost of \$112.³ The estimated number of 2 burden hours is a reduction of 23.25 hours from the current allocation. The reduction is a result of the registrant's elimination of duplicative records in the United States. All of the registrant's records are only maintained in the United States.

² The rule requires an applicant to maintain records in the United States (which, without the requirement, could be available only in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant, however, only maintains its records in the United States and in no other jurisdiction. Therefore, the registrant's maintenance of records in the United States does not impose an additional burden beyond the fund's compliance with the Act's requirements. This recordkeeping requirement is reflected in the information collection burdens applicable to those requirements for all registered funds.

³ The \$56/hour figure for a Compliance Clerk is from the SIA Report on Office Salaries in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

If a fund were to file an application under rule 7d-1 to register under the Act, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied to register under the Act pursuant to rule 7d-1 in the last three years.

As noted above, after registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d-1 does not mandate these applications. The active registrant has not filed a substantive supplemental application in the past three years. Therefore, the Commission has not allocated any burden hours for these applications.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

13. Estimate of Total Annual Cost Burden

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d-1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated \$17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons.

Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that the fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be \$17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no fund has applied under rule 7d-1 to register under the Act in the last three years.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

14. Estimate of Cost to the Federal Government

Rule 7d-1 has imposed minimal costs on the federal government for reviewing the small number of applications and supporting documents filed with the Commission under the rule since 1954. No fund has applied under rule 7d-1 to register under the Act in the last three years. The Commission receives occasional reports updating lists of affiliated persons as required by the rule.

15. Explanation of Changes in Burden

The estimated number of 2 burden hours is a reduction of 23.25 hours from the current allocation. The reduction is a result of the registrant's elimination of duplicative records in the United States. All of the registrant's records are only maintained in the United States.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS