

**SUPPORTING STATEMENT**  
**Form N-17D-1**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 17(d) of the Investment Company Act (15 U.S.C. 80a-17(d)) (the “Act”) authorizes the Commission to adopt rules that protect investment companies (“funds”) and their shareholders from self-dealing and other forms of overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan.<sup>1</sup> Rule 17d-1 under the Act (17 CFR 270.17d-1) prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Paragraph (d)(3) of the rule provides an exemption from this requirement for any loan or credit advance to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of these transactions (“investments”) made by a small business investment company (“SBIC”) and a bank that is an affiliated person of (1) the SBIC or (2) an affiliated person of the SBIC (“affiliated bank”). The exemption requires the Commission to prescribe reports about the investments, and the Commission has designated Form N-17D-1 (“form”) as the form for reports required by paragraph (d)(3) of rule 17d-1.<sup>2</sup>

An SBIC and its affiliated bank must file Form N-17D-1, which has two parts, with the Commission. Part I describes any investment in a small business concern made at the same time by the SBIC and the affiliated bank (or an investment made by either entity when the other has an existing investment). The SBIC must list the name and address of the small business concern

---

<sup>1</sup> See 15 U.S.C. 80a-2(a)(3) (definition of “affiliated person”).

<sup>2</sup> See 17 CFR 270.17d-2.

and the nature of its business, and the name and address of the affiliated bank and the basis of its affiliation with the SBIC. The SBIC and the affiliated bank also must report any outstanding investments in the small business concern, and the small business concern's use of the proceeds of investments made during the reporting period. If the SBIC invested at the same time or after the affiliated bank, the report must state any changes in the nature and amount of the affiliated bank's investment during the period beginning a year before the SBIC's investment up to the date of the report. Finally, the report must state the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of any affiliated person of the SBIC or affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person received or will receive.

Part II of the form requires a report about any disposition of an investment, default in the payment of interest or principal, or extension or modification of the terms of any investment made by an SBIC in a small business concern in which an affiliated bank also has invested. The report must identify the investment and describe in detail any disposition, default, extension, or modification involved. If the SBIC has disposed of an investment, the report must state the profit or loss realized. If a loss was sustained, default occurred, or the terms of the investment were extended or modified, the report must describe the circumstances of the event.

The SBIC and affiliated bank must file a form for every semi-annual accounting period during which one or more of the events referenced in Part I or II occurred. The SBIC and the affiliated bank may file the form jointly or separately, as long as the separate reports together contain all the information requested by the form. The Commission processes but does not review the form routinely. The form is available to members of the public for inspection and

copying. Therefore, it is useful for any person who wishes to monitor joint transactions by SBICs and their affiliated banks.

## **2. Purpose of the Information Collection**

As discussed above, Form N-17D-1 provides information to the Commission and the public about joint transactions by SBICs and their affiliated banks. Joint transactions with affiliates create the risk that the affiliated persons of the SBIC may engage in self-dealing or other forms of overreaching at the expense of shareholders. Disclosures on the form provide information about these joint transactions to persons seeking to make an informed decision about investing in an SBIC. The form also affords the Commission the opportunity to monitor compliance with the Act in this area.

If the Commission did not collect the information contained in the form, neither the Commission nor the investing public would be able to monitor or evaluate the potentially abusive joint transactions engaged in by SBICs and their affiliated banks. If the rules did not permit SBICs to file the form, SBICs would have to go through the more time-consuming and expensive process of filing an application for an exemptive order from the Commission. Thus, the exemption conditioned on filing the form allows SBICs greater flexibility to engage in these joint transactions.

## **3. Role of Improved Information Technology**

The Commission's electronic filing system, called EDGAR, for Electronic Data Gathering, Analysis and Retrieval, is designed to automate the filing, processing, and dissemination of full disclosure filings. Form N-17D-1 is not currently required to be filed on EDGAR, but may be in the future.

**4. Efforts to Identify Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes a rule or a change in a rule. Form N-17D-1 does not call for duplicative information and the information called for in the form is not otherwise available to the Commission or the public.

**5. Effect on Small Entities**

The form was developed to meet the special needs of SBICs, many of which are small entities. As discussed above, one of the purposes of the form is to allow such entities to avoid the more onerous and expensive exemptive application process. The Commission believes the benefits of disclosure to investors and the flexibility to SBICs of filing the form justify the costs of providing the information on the form.

**6. Consequences of Less Frequent Collection**

SBICs and affiliated banks must file the form no later than 30 days after the six-month accounting period in which the contemporaneous investment occurs. Less frequent collection would permit the potentially abusive affiliated transactions to proceed for too long without disclosure to the Commission and investors. Investors could be harmed and the Commission would have no meaningful way of making a current assessment of these transactions.

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

Not applicable.

## **8. Consultations Outside the Agency**

The Commission adopted the form, after notice and public comment, on November 17, 1961.<sup>3</sup> The Commission requested public comment on the collection of information requirements of Form N-17D-1 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request.

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

## **9. Payment or Gift to Respondents**

Not applicable.

## **10. Assurance of Confidentiality**

Not applicable

## **11. Sensitive Questions**

Not applicable.

## **12. Estimate of Hour Burden**

Most of the information requested on the form should be readily available to the SBIC or the affiliated bank in records kept in the ordinary course of business, or with respect to the

---

<sup>3</sup> Adoption of Rules and a Related Form Applicable to Small Business Investment Companies Licensed by the Small Business Administration to Provide Exemption from Certain Requirements of Sections 17(a), 17(d) and 18(c) of the Investment Company Act of 1940, Investment Company Act Release No. 3361 (Nov. 17, 1961) [26 FR 11239 (Nov. 29, 1961)].

SBIC, pursuant to the recordkeeping requirements under the Act. Commission staff estimates that it should take approximately one hour for an accountant or other professional to complete the form.<sup>4</sup> Up to five SBICs may file the form annually.<sup>5</sup> No SBIC has filed the form in recent years, however. Thus, Commission staff estimates that no more than one SBIC is likely to file the form in any year. Thus, the estimated total annual burden of filling out the form is 1 hour, at an estimated total annual cost of \$185.<sup>6</sup>

The estimate of average burden hours is made solely for 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.

### **13. Estimate of Total Annual Cost Burden**

Commission staff estimates that the only cost burden of the form is identified in item 12 of this Supporting Statement.

### **14. Estimate of Cost to the Federal Government**

The Commission processes, but does not review, the reports on Form N-17D-1. The Commission's operational cost of processing the form is nominal.

### **15. Explanation of Changes in Burden**

Not applicable.

### **16. Information Collection Planned for Statistical Purposes**

<sup>4</sup> This estimate of hours is based on past conversations with representatives of SBICs and accountants that have filed the form.

<sup>5</sup> As of May 22, 2008, five SBICs were registered with the Commission.

<sup>6</sup> Commission staff estimates that the annual burden would be incurred by a senior accountant with an average hourly wage rate of \$185 per hour. See Securities Industry Association and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry – 2007 (2007), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Not applicable.

**16. Approval to not Display Expiration Date**

Not applicable.

**17. Exceptions to Certification Statement**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.