

SUPPORTING STATEMENT
Rule 34b-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 34(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-33(b)) (“Investment Company Act”) makes it unlawful for any person to make an untrue statement of a material fact in any documents filed or transmitted pursuant to the Investment Company Act or to omit a statement necessary to prevent such documents from being materially misleading.

Rule 34b-1 under the Investment Company Act (17 CFR 270.34b-1) governs sales material that accompanies or follows the delivery of a statutory prospectus (“sales literature”).¹ Rule 34b-1 deems to be materially misleading any investment company sales literature required to be filed with the Securities and Exchange Commission (“Commission”) by Section 24(b) of the Investment Company Act (15 U.S.C. 80a-24(b))² that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482).

¹ A “statutory prospectus” is a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)).

² Sales literature addressed to or intended for distribution to prospective investors is deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with a national securities association registered under Section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. See Rule 24b-3 under the Investment Company Act (17 CFR 270.24b-3).

2. Purpose of the Information Collection

Rule 34b-1 is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

3. Role of Improved Information Technology

The Commission's electronic filing system ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit their filings to the Commission electronically. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Rule 34b-1 sales literature is required to be filed electronically on EDGAR.³

4. Efforts to Identify Duplication

The rule does not call for duplicative, overlapping, or conflicting disclosure. The Commission staff reviews the collection of information requirements on an ongoing basis to find and eliminate duplicative requirements.

5. Effect on Small Entities

The current disclosure requirements for rule 34b-1 sales literature do not distinguish between small entities and other funds. The burden on smaller funds may be greater than on larger funds. The Commission believes, however, that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of the rule 34b-1 requirements.

The Commission has considered special requirements for small entities. Different disclosure requirements for small entities would create the risk that shareholders would receive misleading performance information about those entities. We believe that

³ See Rule 101(a)(1)(iv) of Regulation S-T (17 CFR 232.101(a)(1)(iv)).

potential investors in all investment companies should have access to performance information that would enable them to easily compare different investment companies.

We review all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

6. Consequences of Less Frequent Collection

The information required by rule 34b-1 under the Investment Company Act is given to shareholders and filed with the Commission only when funds provide sales literature to investors.⁴ Because the Commission does not have authority over the frequency with which funds decide to provide sales literature, it cannot require less frequent collection unless it does not require the collection with respect to every sales literature item. Not requiring disclosure of the information required by rule 34b-1 would harm investors by denying them information that may be useful in making investment decisions.

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

Not applicable.

8. Consultation Outside the Agency

Rule 34b-1 has previously been amended through rulemaking actions pursuant to the Administrative Procedures Act. Comments are generally received from registrants, trade associations, the legal and accounting professions, and other interested parties. In addition, the Commission and 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.

⁴ See supra note Error: Reference source not found.

The Commission requested public comment on the collection of information requirements in rule 34b-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 its request.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Hourly Burden

The Commission estimates that 3,210 respondents file approximately 13,001 responses that include the information required by rule 34b-1. The burden resulting from the collection of information requirements of rule 34b-1 is 2.41 hours per response. The total burden hours for rule 34b-1 is 31,332 per year in the aggregate (13,001 responses x 2.41 hours per response).

Of the 31,332 hours spent annually to comply with rule 34b-1, the Commission estimates that:

- Fifteen percent (4,699.8 hours) are spent by General Clerks at an estimated hourly wage of \$40,⁵ for a total of \$187,992 per year;
- Eighty percent (25,065.6 hours) are spent by Accounting Clerks at an estimated hourly wage of \$54,⁶ for a total of \$1,353,542 per year; and
- Five percent (1,566.6 hours) are spent by Senior Accountants at an estimated hourly wage of \$185,⁷ for a total of \$289,821 per year.

Thus, the estimated aggregate annual cost of the hour burden imposed by rule 34b-1 is \$1,831,355 (\$187,992 + \$1,353,542 + \$289,821).

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

13. Estimate of Total Annual Cost Burden

It is estimated that there is no cost burden other than the cost of respondent burden identified in Item 12 of this Supporting Statement.

⁵ The \$ 40/hour figure for a General Clerk is from SIFMA's Office Salaries in the Securities Industry 2007, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

⁶ The \$ 54/hour figure for an Accounting Clerk is from SIFMA's Office Salaries in the Securities Industry 2007, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

⁷ The \$ 185/hour figure for a Senior Accountant is from SIFMA's Management & Professional Earnings in the Securities Industry 2007, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

14. Estimate of Cost to the Federal Government

Rule 34b-1 regulates sales literature that is required to be filed with the Commission by Section 24(b) of the Investment Company Act. The vast majority of the responses that are required to be filed under Section 24(b) of the Investment Company Act are in practice filed with a national securities association⁸ and deemed filed with the Commission under rule 24b-3.⁹ As a result, the estimated cost to the federal government related to rule 34b-1 responses is negligible.

15. Explanation of Changes in Burden

Previously, we had estimated an annual total hour burden of 89,143 hours for rule 34b-1. This number was based on a yearly estimate of 37,000 responses filed by 4,500 respondents with an estimated burden of 2.4092702 hours per response. The change in estimate of the burden hours for rule 34b-1 from the previous submission under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is due to a reduction in the number of respondents from 4,500 to 3,210 and in the number of responses from 37,000 to 13,001. The estimated burden hours per response was also rounded from 2.4092702 hours per response to 2.41 hours per response, resulting in a net decrease of 57,811 hours per year.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

⁸ The Financial Industry Regulatory Authority (FINRA) registers member firms, writes rules to govern their behavior, examines them for compliance and disciplines those that fail to comply.

⁹ See supra note Error: Reference source not found.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.