

**SUPPORTING STATEMENT**  
**Rule 11a-3**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 11(a) of the Investment Company Act of 1940 ("Act") (15 USC 80a-11(a)) provides that it is unlawful for a registered open-end investment company ("fund") or its underwriter to make an offer to the fund's shareholders or the shareholders of any other fund to exchange the fund's securities for securities of the same or another fund on any basis other than the relative net asset values ("NAVs") of the respective securities to be exchanged, "unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers." Section 11(a) was designed to prevent "switching," the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a-3 (17 CFR 270.11a-3) under the Act permits funds and their principal underwriters, subject to specified conditions, to make exchange offers at other than relative NAVs to the fund's own shareholders or to shareholders of another fund in the same group of investment companies. Paragraphs (b)(6) and (7) of the rule require a fund to disclose in its prospectus and advertising literature, among other things, the amount of any administrative or redemption fee imposed on an exchange transaction ("disclosure requirement"). Paragraph (a)(2)(i) of the rule requires a fund that imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, the first two in an easily accessible place ("recordkeeping requirement"). Finally, paragraph (b)(8) of the rule requires a fund to give its shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer ("notice requirement"). The notice is not required

when the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange, or under certain extraordinary circumstances.

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

Rule 11a-3 is an exemptive rule designed to enable funds to make exchange offers, subject to conditions designed to protect investors against abuses that are addressed by section 11(a) of the Act. The disclosure and notice requirements of the rule are intended to provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers. The recordkeeping requirement is designed to enable the staff to monitor the use of administrative fees imposed in connection with exchange transactions.

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

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 their 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.

Rule 11a-3 does not require the filing of any information with the Commission. The information covered by the recordkeeping requirement of the rule may be preserved on photographic film or on magnetic tape, disk, or other computer storage medium in the manner prescribed in rule 31a-2 under the Act (17 CFR 270.31a-2).

## **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. Rule 11a-3 does not impose any duplicative recordkeeping or reporting requirements, and information similar to that required to be provided by the rule is not available elsewhere.

**5. Effect on Small Entities**

The Commission does not believe that compliance with rule 11a-3 is unduly burdensome for large or small entities. Rule 11a-3 provides an exemption for any fund, including a fund that is a small entity, to make exchange offers. The requirements of the rule must be complied with by any fund that wishes to make exchange offers in reliance on the rule. These requirements are designed to protect fund investors and provide them with adequate and timely information. The benefits of being able to rely on the rule, rather than seek exemptive relief from the Commission, should outweigh the burdens associated with the rule's requirements.

**6. Consequences of Less Frequent Collection**

The notice requirement in rule 11a-3 is designed to give fund shareholders timely information concerning a termination of an exchange offer or a material change in the terms of an exchange offer. If shareholders did not receive notice of such a change, or received notice only a short time before the change took effect, they might not be able to exercise their right to make an exchange before the change took effect.

If the disclosure requirement were deleted, shareholders would not receive full information on the terms under which exchange transactions take place. If the recordkeeping requirement were deleted, the Commission would not have access to information regarding funds' compliance with the terms of the rule.

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

The recordkeeping requirement in the rule requires certain records to be preserved for at least six years. This requirement is designed to ensure that the Commission staff would be able to adequately evaluate funds' use of administrative fees charged in connection with exchange transactions.

**8. Consultation Outside the Agency**

The Commission requested public comment on the collection of information requirements in rule 11a-3 before it submitted this request to the Office of Management and Budget. The Commission received no comments in response to its request.

The Commission and its staff 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**

The staff estimates that there are approximately 1958 active open-end investment companies registered with the Commission as of September 2008. The staff estimates that 25 percent (or 490) of these funds impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time (at an estimated \$40 per hour)<sup>1</sup> per fund, for a total of 490 hours for all funds (at a total annual cost of \$19,600).<sup>2</sup>

The staff estimates that 5 percent of these 1958 funds (or 98) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to

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<sup>1</sup> The estimate of \$40 per hour for a General Clerk is derived from the Securities Industry and Financial Markets Association's ("SIFMA") Office Salaries in the Securities Industry 2007, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>2</sup> This estimate is based on the following calculations: (1958 funds × 0.25% = 490 funds); (490 × 1 (clerical hour) = 490 clerical hours); (490 × \$40 = \$19,600 total annual cost for recordkeeping requirement).

comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time (at an estimated \$295 per hour)<sup>3</sup> and 2 hours of clerical time (at an estimated \$40 per hour) per fund, for a total of approximately 294 hours for all funds to comply with the notice requirement (at a total annual cost of \$36,750).<sup>4</sup> The recordkeeping and notice requirements together therefore impose a total burden of 784 hours on all funds (at a total annual cost of \$48,510).<sup>5</sup> The total number of respondents is 588, each responding once a year.<sup>6</sup> The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N-1A registration statement for funds.

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

The rule is not estimated to impose any cost burdens other than those discussed in item 12 above.

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

The rule does not impose any additional costs on the Federal government. The rule's recordkeeping requirement assists the Commission staff in its examination efforts.

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

The decrease in the estimated total annual burden hours from 2300 hours to 784 hours is primarily due to: (i) a decrease in the estimated number of active registered open-ended funds,

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<sup>3</sup> The estimate of \$295 per hour for an Attorney is derived from SIFMA's Management & Professional Earnings in the Securities Industry 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.

<sup>4</sup> This estimate is based on the following calculations:  $(1958 \text{ (funds)} \times 0.05\% = 98 \text{ funds})$ ;  $(98 \times 1 \text{ (attorney hour)} = 98 \text{ total attorney hours})$ ;  $(98 \text{ (funds)} \times 2 \text{ (clerical hours)} = 196 \text{ total clerical hours})$ ;  $(98 \text{ (attorney hours)} + 196 \text{ (clerical hours)} = 294 \text{ total hours})$ ;  $(98 \text{ (attorney hours)} \times \$295 = \$28,910 \text{ total attorney cost})$ ;  $(196 \text{ (clerical hours)} \times \$40 = \$7840 \text{ clerical cost})$ ;  $(\$28,910 + \$7840 = \$36,750 \text{ total annual cost})$ .

<sup>5</sup> This estimate is based on the following calculations:  $(294 \text{ (notice hours)} + 490 \text{ (recordkeeping hours)} = 784 \text{ total hours})$ ;  $(\$28,910 \text{ (notice costs)} + \$19,600 \text{ (recordkeeping costs)} = \$48,510 \text{ total annual costs})$ .

<sup>6</sup> This estimate is based on the following calculation:  $(490 \text{ funds responding to recordkeeping requirement} + 98 \text{ funds responding to notice requirement} = 588 \text{ total respondents})$ .

and (ii) an adjustment in the staff's estimated percentage of funds that terminate or significantly modify an exchange offer each year.<sup>7</sup> The decrease in the number of annual responses from 1150 to 588 is due to a similar decrease in the number of funds registered with the Commission and revised estimates of the percentage of funds that terminate or modify their exchange offers.

**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**

Not applicable.

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<sup>7</sup> This change in the estimated percentage of funds that terminate or significantly modify an exchange offer each year is based on conversations with fund representatives.