

SUPPORTING STATEMENT
Rule 17f-6

A. JUSTIFICATION

1. Necessity for the Information Collection

Rule 17f-6 (17 CFR 270.17f-6) under the Investment Company Act of 1940 (15 U.S.C. 80a), which was adopted on December 11, 1996,¹ permits registered investment companies (“funds”) to maintain assets (i.e., margin) with futures commission merchants (“FCMs”) in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain those assets in special accounts with a custodian bank. The rule was designed to eliminate unnecessary regulatory burdens, and to enable funds to effect their commodity trades in the same manner as other market participants.

Rule 17f-6 permits funds to maintain their assets with FCMs that are registered under the Commodity Exchange Act (“CEA”) and that are not affiliated with the fund. The rule requires that a written contract containing the following provisions govern the manner in which the FCM maintains a fund’s assets:

- The FCM must comply with the segregation requirements of section 4d(2) of the CEA (7 U.S.C. 6d(2)) and the rules under that statute (17 CFR Chapter I) or, if applicable, the secured amount requirements of rule 30.7 under the CEA (17 CFR 30.7);

¹ Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

- If the FCM places the fund's margin with another entity for clearing purposes, the FCM must obtain an acknowledgment from the clearing organization that the fund's assets are held on behalf of the FCM's customers in accordance with provisions under the CEA; and
- Upon request the FCM must furnish records about the fund's assets to the Commission or its staff.

2. Purpose of the Information Collection

The rule requires a fund and an FCM to enter into a written contract that contains certain safeguards relating to the custody of fund assets by the FCM. For example, the requirement that FCMs comply with segregation or secured amount requirements is designed to protect fund assets held by FCMs. The requirement that an FCM obtain an acknowledgement from any entity upon which it relies to clear fund transactions accommodates the legitimate needs of the participants in the commodity settlement process, while ensuring that fund assets are protected. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

3. Role of Improved Information Technology

The Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") provides for the automated filing, processing, and dissemination of full disclosure filings. The automation provides for speed, accuracy and public availability of information, generating benefits to investors and financial markets. While EDGAR currently is limited to disclosure and fund deregistration filings, EDGAR may be used in the future to obtain other types of information from sources outside the Commission, such as information requested by the Commission or its staff in connection with an inspection of fund margin in an FCM's custody. FCMs may provide such information to Commission staff on computer diskette using computer

software programs that are available to the Commission staff (such as EXCEL). The Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001) and the conforming amendments to recordkeeping rules under the Investment Company Act permit funds to maintain records electronically.

4. Efforts to Identify Duplication

The Commission sought to avoid duplication of requirements imposed under the CEA and CFTC rules that more generally govern FCM and clearinghouse custody of customer margin. Thus, for example, rule 17f-6 does not require FCMs to maintain daily financial ledger records of fund margin deposits or to supply funds with monthly account statements. FCMs and their customers typically enter into a contract when an FCM is retained to effect commodities transactions, and the rule requires certain terms for contracts with an FCM's fund clients, some of which incorporate requirements under the CEA.

5. Effect on Small Entities

The information collection requirements of rule 17f-6 apply to all funds, including those that are small entities. The Commission believes that the costs of complying with the rule are minimal and do not impose a significant burden on small entities.

6. Consequences of Less Frequent Collection

The contract requirements of rule 17f-6 do not recur periodically, but rather have to be followed only when a fund enters into a contract with an FCM. Less frequent collection would not be consistent with the Commission's investor protection objectives.

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

None.

8. Consultation Outside the Agency

When rule 17f-6 was proposed in 1994, the Commission sought public comment on all aspects of the proposed rule, including any requirements that would result in paperwork burdens.² The final rule reflected changes to the rule to address commenters' suggestions. The Commission also requested public comment on the collection of information requirements of rule 17f-6 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.

In addition, the Commission and its staff participate in an ongoing dialogue with representatives of the fund 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

If an FCM furnishes records pertaining to a fund's assets at the request of the Commission or its staff, the records will be kept confidential to the extent permitted by relevant statutory or regulatory provisions.

11. Sensitive Questions

Not applicable.

² Rule 17f-6 was proposed for public comment on May 24, 1994. Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organization, Investment Company Act Release No. 20313 (May 24, 1994) [59 FR 28286 (June 1, 1994)]. See also Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations—Extension of Comment Period, Investment Company Act Release No. 20430 (July 28, 1994) [59 FR 39311 (Aug. 2, 1994)].

12. Estimate of Hour Burden

The only collection of information requirements of rule 17f-6 are the rule's contract requirements. The Commission estimates that approximately 2270 funds effect commodities transactions and could deposit margin with FCMs under rule 17f-6 in connection with those transactions.³ Commission staff estimates that each fund uses and deposits margin with two different FCMs in connection with its commodity transactions.⁴ Approximately 131 FCMs are eligible to hold fund margin under the rule.⁵

The Commission estimates that each of the 2270 funds spends an average of 1 hour annually complying with the contract requirements of the rule (*i.e.*, executing contracts that contain the requisite provisions with additional FCMs), for a total of 2270 burden hours. At \$358 per hour of professional (legal) time, Commission staff estimates that the dollar cost for the 2270 hours will be approximately \$812,660.⁶ The estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered "collections of information," the burden hours for compliance are already included in other PRA submissions or are de minimis.⁷

³ This estimate is based on the number of funds that currently report on Form N-SAR, in response to items (b) through (i) of question 70, the ability to engage in futures and commodity option transactions.

⁴ This estimate is based on information conversations with representatives of the fund industry.

⁵ Commodity Futures Trading Commission, Selected Financial Data for Futures Commission Merchants (Apr. 2009) (available at <http://www.cftc.gov/tm/tmfc.htm>).

⁶ Commission staff relied on the Securities Industry Association, Management and Professional Earnings in the Securities Industry (2008), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, to determine the hourly wages used in the calculation of this estimate.

⁷ The rule requires a contract with the FCM to contain three provisions. Two of the provisions require the FCM to comply with existing requirements under the CEA and rules

13. Estimate of Total Annual Cost Burden

The rule is not estimated to impose any 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.

15. Explanation of Changes in Burden

The change in the estimate of burden hours from the previous PRA submission is attributable to a decrease in the number of funds that may need to rely on the rule from 2275 to 2270, resulting in a corresponding decrease in burden hours. The estimated hour burden per fund has remained 1 hour. The net change in burden hours, therefore, is a decrease of 5 hours.

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.

adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the Commodity Futures Trading Commission for its rules. The third contract provision requires that the FCM produce records or other information requested by the Commission or its staff. Commission staff has requested this type of information from an FCM so infrequently in the past that the annual burden hours are de minimis.