

SUPPORTING STATEMENT
Rule 17j-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (“personal investment activities”). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Section 17(j) of the Investment Company Act of 1940 (the “Investment Company Act”) (15 U.S.C. 80a-17(j)) makes it unlawful for persons affiliated with a registered investment company (“fund”) or with the fund’s investment adviser or principal underwriter (each a “17j-1 organization”), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission’s rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j-1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j-1 imposes certain requirements on 17j-1 organizations and “Access Persons”¹ of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j-1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule

¹ Rule 17j-1(a)(1) defines an “access person” as “Any advisory person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.” The definition of Access Person also includes “Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.” Rule 17j-1(a)(1).

requires each 17j-1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,² to: (i) adopt a written codes of ethics; (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval; (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code; (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j-1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code; (v) identify Access Persons and notify them of their reporting obligations; and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,³ to file: (i) within 10 days of

² A “Covered Security” is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers’ acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j-1(a)(4).

³ Rule 17j-1(d)(2) contains the following exceptions: (i) an Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director of the fund, who would otherwise not need to report and who does not have information with respect to the fund’s transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser’s Act; and (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j-1 organization in the form of broker trade confirmations or account statements or information

becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the access person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j-1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

2. Purpose of the Information Collection

Rule 17j-1 provides for oversight by a fund's board of director's of the codes of ethics and procedures employed by the fund, its investment advisers and underwriters to prevent fraudulent, deceptive, or manipulative acts in connection with the purchase or sale by persons associated with those entities of securities held or to be acquired by the fund. Without the rule, fund boards and the Commission would be hampered in their ability to monitor fully the conduct of such persons for activities that are fraudulent, deceptive or manipulative.

3. Role of Improved Information Technology

Some 17j-1 entities employ computerized transaction reporting and recordkeeping systems to reduce the burden in connection with rule 17j-1. Although these systems can impose substantial start-up and maintenance costs, they can help to reduce the information collection burdens arising under rule 17j-1. The Commission permits the use of such technologies to comply with rule 17j-1.

otherwise in the records of the 17j-1 organization.

4. Efforts to Identify Duplication

The Commission is not aware of any duplicate reporting or recordkeeping requirements. Rule 17j-1(d)(2)(iv) under the Investment Company Act relieves an access person of the duty to file reports if those reports would duplicate reports required by rules under the Investment Advisers Act of 1940.⁴ Rule 17j-1(d)(2)(v) exempts an Access Person from filing the quarterly transaction report if it would duplicate information already received by the 17j-1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j-1 organization.

Information collected under the rule is intended to improve board oversight of personal investment activities of fund personnel. Similar information would not achieve that goal.

5. Effect on Small Entities

All rule 17j-1 organizations, regardless of size, must adopt a code of ethics and keep records of reports submitted by Access Persons. The reporting and recordkeeping requirements for small entities could not be reduced without risking harm to investors' interests.

6. Consequences of Less Frequent Collection

In order for fund boards to play a meaningful oversight role, it is necessary for them to receive no less frequently than annually reports from the fund, its investment advisers and underwriters regarding issues arising under the code of ethics. Rule 17j-1, by requiring Access Persons to provide initial holdings reports, quarterly transactions reports, and annual holdings reports, enables rule 17j-1 organizations to monitor the securities transactions of Access Persons to ensure compliance with their codes of ethics. Less frequent collection of such reports would hinder these organizations from enforcing their codes.

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

⁴ Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) (66 FR 41696 (Jul. 9, 2004)).

Not applicable.

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 17j-1 before it submitted this request for approval to the Office of Management and Budget. The Commission received no comments in response to this request.

More generally, the Commission and the 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 the 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 spoke with representatives of a number of 17j-1 organizations. Based upon these conversations and its experience with the industry, the staff has made estimates with respect to the reporting burden. As noted above, Access Persons must file initial and annual holdings reports and quarterly transaction reports. Investment personnel must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement. In addition, rule 17j-1 organizations have a number of responsibilities, most of which are carried out at the fund complex level⁵, arising from information collection requirements under rule 17j-1. The organizations must notify Access Persons of their reporting obligations, prepare an

⁵ The staff estimate's that there are 655 fund complexes.

annual rule 17j-1 report and certification for the board, document their approval or rejection of IPO and private placement requests, maintain annual rule 17j-1 records, maintain electronic reporting and recordkeeping systems, amend their codes of ethics as necessary, and, for new fund complexes, adopt a code of ethics.

The estimated burdens associated with these information collections are set forth in the table below.

Information Collection	Annual Hours Per Person or Complex	Annual Aggregate Hours	Person Responsible	Hourly Rate (\$)⁶	Annual Aggregate Cost (\$)
Initial Holdings Report	1	5240 ⁷	New Access Person	202 ⁸	1,058,480 ⁹
Quarterly Transaction Report	1/4	6250 ¹⁰	Access Person	202	1,262,500 ¹¹

⁶ All hourly rates used in this analysis (except for the “access person” average rate of \$202 per hour and the aggregate board rate) are derived from salaries reported in Securities Industry and Financial Markets Association, Management and Professional Earnings in the Securities Industry (2008) and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry (2008) modified to account for an 1800-hour work-year and multiplied by 2.93 or 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁷ We estimate that there are approximately 8 new access persons per fund complex each year and 5240 total new access persons each year (8 new access persons × 655 fund complexes = 5240 new access persons). In addition, we estimate that the total number of access persons remains approximately steady due to attrition.

⁸ Although hourly rates of access persons differ, we estimate that, on average, the time for access persons required to complete initial holdings reports and other transaction reports costs \$202 per hour. Access person’s would include portfolio managers, director’s and other officers of the fund. The \$202 rate is that of a typical mid level portfolio manager.

⁹ This is based on the following calculations: (5240 new access persons × 1 hour = 5240 hours; 5240 hours × \$202 rate = \$1,058,480).

¹⁰ We estimate that annually 25,000 quarterly transactions reports are filed. Access persons do not have to file such reports in certain instances including, for example, when they have not engaged in any securities transactions during a particular quarter, or when the relevant information is contained in duplicate broker trade confirmations or account statements received by the firm.

¹¹ This is based on the following calculations: (25,000 quarterly reports × .25 hour = 6250 hours; 6250 hours × \$202 rate = \$1,262,500).

Information Collection	Annual Hours Per Person or Complex	Annual Aggregate Hours	Person Responsible	Hourly Rate (\$)	Annual Aggregate Cost (\$)
Annual Holdings Report	1/2	35,000 ¹²	Access Person	202	7,070,000 ¹³
IPO/Private Placement Preapproval Request	1	3930 ¹⁴	Investment Personnel	202	793,860 ¹⁵
Informing Access Persons of Reporting Obligation	3	1965	Compliance Officer	258	506,970 ¹⁶
Preparation of Annual Report to Board and Certification	5	3275	Chief Compliance Officer (50%) <u>Attorney for Fund Complex (50%)</u>	391 <u>305</u>	1,139,700 ¹⁷
Documentation of IPO/Private Placement Approval/Rejection	3 (½ hour per request)	1965	Chief Compliance Officer	391	768,315 ¹⁸

¹² Each of the approximately 70,000 access persons must file an annual holdings report.

¹³ This is based on the following calculations: (70,000 annual reports × .5 hour = 35,000 hours; 35,000 hours × \$202 rate = \$7,070,000).

¹⁴ We estimate that each of the 655 fund complexes receives approximately 6 such requests each year, for a total of approximately 3930 such requests filed each year.

¹⁵ This is based on the following calculations: (3930 IPO requests × 1 hour = 3930 hours; 3930 hours × \$202 rate = \$793,860).

¹⁶ This is based on the following calculations: (655 fund complexes × 3 hours = 1965 hours; 1965 hours × \$258 rate = \$506,970).

¹⁷ This is based on the following calculations: (655 fund complexes × 5 hours = 3275 hours; 3275 ÷ 2 = 1637.5 hours (50% division between CCO and attorney); 1637.5 hours × \$391 rate = \$640,262.5 CCO costs; 1637.5 hours × \$305 rate = \$499,437.5 attorney costs; \$640,262.5 CCO costs + \$499,437.5 attorney costs = \$1,139,700 total costs).

¹⁸ This is based on the following calculations: (3930 IPO requests × .5 hour for processing each request = 1965 hours; 1965 hours × \$391 rate = \$768,315).

Information Collection	Annual Hours Per Person or Complex	Annual Aggregate Hours	Person Responsible	Hourly Rate (\$)	Annual Aggregate Cost (\$)
Rule 17j-1 Recordkeeping, Review and Analysis	300	196,500	Chief Compliance Officer (5%) Compliance Clerk (95%)	391 <u>63</u>	15,602,100 ¹⁹
Maintenance of Computer Systems for Use in 17j-1 Reporting and Recordkeeping	50	32,750	Programmer Analyst	193	6,320,750 ²⁰
Preparation and Board Approval of New Code of Ethics for New Fund Complex	25	625 ²¹	Chief Compliance Officer (40%) Attorney for Fund Complex (40%) Board of Directors (20%)	391 <u>305</u> <u>4000</u>	674,000 ²²

¹⁹ This is based on the following calculations: (655 fund complexes × 300 hours = 196,500 hours; 196,500 x .95 = 186,675 hours clerk time (9825 hours CCO time with a 95% and 5% division between clerk and CCO); 9825 CCO hours × \$391 rate = \$3,841,575 CCO costs; 186,675 clerk hours × \$63 rate = \$11,760,525 clerk costs; \$3,841,575 CCO costs + \$11,760,525 clerk costs = \$15,602,100 total costs).

²⁰ This is based on the following calculations: (655 fund complexes × 50 hours = 32,750 hours; 32,750 x \$193 per hour = \$6,320,750).

²¹ We estimate that there are 25 new fund complexes formed each year.

²² This is based on the following calculations: (25 new fund complexes × 25 hours = 625 hours; 625 hours x .40 = 250 hours (40% division each for CCO and attorney); 625 hours x .20 = 125 hours (board time); 250 hours × \$391 rate = \$97,750 CCO costs; 250 hours × \$305 rate = \$76,250 attorney costs; 125 hours × \$4,000 rate = \$500,000, \$97,750 CCO costs + \$76,250 attorney costs + \$500,000 board costs = \$674,000 total costs).

Information Collection	Annual Hours Per Person or Complex	Annual Aggregate Hours	Person Responsible	Hourly Rate (\$)	Annual Aggregate Cost (\$)
Preparation and Board approval of Material Amendments to Existing Codes of Ethics, Implementing Policies and Procedures, and Board Review and Certification	8	5,240	Chief Compliance Officer (25%) Attorney for Fund Complex (50%) Board of Directors (25%)	391 <hr/> <hr/> 305 <hr/> <hr/> 4000	6,551,310 ²³
TOTAL		292,740			41,747,985

We estimate that annually there are approximately 75,757 respondents under rule 17j-1, of which 5757 are rule 17j-1 organizations²⁴ and 70,000 are Access Persons. In the aggregate, these respondents make approximately 105,125 responses annually.²⁵ As the table shows, we estimate that the total annual burden of complying with the information collection requirements in rule 17j-1 is approximately 292,740 hours and the cost of those hours is approximately \$41,747,985.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative

²³ This is based on the following calculations: (655 fund complexes × 8 hours = 5240 hours, 5240 hours × .25 = 1310 hours (25% division each for CCO and Board); 5240 hours × .50 = 2620 hours (attorney time); 1310 hours × \$391 rate = \$512,210 CCO costs; 2620 hours × \$305 rate = \$799,100 attorney costs; 1310 hours × \$4000 rate = \$5,240,000, \$512,210 CCO costs + \$799,100 attorney costs + \$5,240,000 board costs = \$6,551,310 total costs).

²⁴ Currently, there are approximately 4522 active funds, approximately 815 investment advisers to funds, and approximately 420 principal underwriters to funds, for a total of 5757 17j-1 organizations.

²⁵ This estimate is based on the following calculation: (5240 initial holdings reports by access persons + 25,000 quarterly transaction reports by access persons + 70,000 annual holdings reports by access persons + 3930 preapproval requests by access persons for purchases of initial public offerings and private placements + 655 annual certifications by fund boards + 275 annual material amendments + 25 new codes of ethics for new fund complexes = 105,125 annual responses).

survey or study of Commission rules. Reporting burdens may differ substantially across respondents.

13. Estimate of Total Annual Cost Burden

We estimate that there is an annual cost burden of approximately \$5000 per fund complex, for a total of \$3,275,000²⁶, associated with complying with the information collection requirements in rule 17j-1, aside from the cost of the burden hours discussed above.²⁷ This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j-1 recordkeeping. The estimate of average cost burden is 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. Reporting burdens may differ substantially across respondents.

14. Estimate of Cost to the Federal Government

There is no cost to the federal government of administering the information collection requirements in rule 17j-1 under the Investment Company Act.

15. Explanation of Changes in Burden

The increase from [169,950](#) burden hours to 292,740 hours (an increase of 122,790 hours) reflects a change in the estimated number of Access Persons and fund complexes, as well as adjustments to the hour estimates we made based on discussions with representatives of fund complexes about their experiences in complying with rule 17j-1. In particular, our estimate for each fund complex to review, analyze, and maintain rule 17j-1 records increased significantly, from 180 hours to 300 hours. The increase in costs from \$1,100,000 to \$3,275,000 (an increase of \$2,175,000) associated with the collections of information is primarily attributable to an

²⁶ This estimate is based on the following calculation: (\$5,000 software costs × 655 fund complexes = \$3,275,000 total costs).

²⁷ The cost burden associated with filing of new and amended codes of ethics on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) is included in the Paperwork Reduction Act estimates for the relevant forms to which these codes must be appended.

increase in the estimated costs of purchasing and maintaining computers and software to assist with 17j-1 recordkeeping, although it is also partially attributable to an increase in the number of fund complexes currently operating.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exception to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.