

**SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE  
SECURITIES EXCHANGE ACT OF 1934 AND  
INVESTMENT COMPANY ACT OF 1940**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

**A. JUSTIFICATION**

**1. NECESSITY OF INFORMATION COLLECTION**

In Securities Act Release 33-9073,<sup>1</sup> the Securities and Exchange Commission (the “Commission”) proposed amendments to the Federal proxy rules and related rules under the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>2</sup> to improve the notice and access model for furnishing proxy materials to shareholders. Regulation 14A (Commission Rules 14a-1 through 14a-17 and Schedule 14A)<sup>3</sup> governs the solicitation of proxies and information pursuant to Section 14(a) of the Exchange Act. Regulation 14C (Commission Rules 14c-1 through 14c-7 and Schedule 14C)<sup>4</sup> governs the distribution of information statements pursuant to Section 14(c) of the Exchange Act. Rule 20a-1 under the Investment Company Act of 1940<sup>5</sup> (the “Investment Company Act”) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by an investment company be in compliance with Regulation 14A, Schedule 14A, and all the other rules and regulations adopted under Section 14(a) of the Exchange Act.

**2. PURPOSE OF THE INFORMATION COLLECTION**

The purpose of the information collection in the proposed amendments is to permit, but not require, an issuer or other soliciting person to include explanatory materials with the Notice.<sup>6</sup>

In addition, we are including the initial and proposed burden estimates relating to the information collection resulting from the adoption of the notice and access model for furnishing proxy materials as they apply to investment companies and investment advisors under Rule 20a-1 under the Investment Company Act.<sup>7</sup> Certain provisions of

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<sup>1</sup> Release No. 33-9073 (Oct. 14, 2009) [74 FR 53954].

<sup>2</sup> 15 U.S.C. §78a et seq.

<sup>3</sup> 17 CFR 240.14a-1 et seq.

<sup>4</sup> 17 CFR 240.14c-1 et seq.

<sup>5</sup> 15 U.S.C. 80a-1 et seq.

<sup>6</sup> The proposed amendments would additionally provide flexibility regarding the format of the Notice that is sent to shareholders and revise the timeframe for a soliciting person other than the issuer to deliver a Notice, neither of which would affect the burden estimates.

<sup>7</sup> See Internet Availability of Proxy Material, Release No. 34-55146 (Jan. 22, 2007) [72 FR 4148] and Shareholder Choice Regarding Proxy Materials, Release No. 34-56135 (July 26, 2007) [72 FR 42221].

the current notice and access model contain collection of information requirements applicable to investment companies and investment advisers, including preparation of Notices, maintaining Web sites, maintaining records of shareholder preferences, and responding to requests for copies. Those provisions increase the current burden for the existing collection of information for Rule 20a-1. Rule 20a-1 is intended to ensure that investors in securities of registered investment companies are provided with appropriate information upon which to base informed decisions regarding the actions for which proxies are solicited.

### **3. ROLE OF IMPROVED TECHNOLOGY AND OBSTACLES TO REDUCING BURDEN**

All of the above forms are filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system.

### **4. EFFORTS TO IDENTIFY DUPLICATION**

We are not aware of any rules that conflict with or substantially duplicate the proposed rules.

### **5. EFFECT ON SMALL ENTITIES**

The proposed amendments would apply to all companies subject to the proxy rules, including small entities. The proposed amendments would permit, but not require, an issuer or other soliciting person to include explanatory materials with the Notice. The disclosure standards do not vary based on the size of the issuer. The proposed amendments are intended to provide flexibility to soliciting persons and enhance their ability to use the notice and access model effectively.

Rule 20a-1 does not distinguish between small entities and other entities. The burden for smaller investment companies related to proxy solicitation may be greater than for larger investment companies due to economies of scale.

### **6. CONSEQUENCES OF LESS FREQUENT COLLECTION**

The Notice is designed to briefly notify shareholders that proxy materials are electronically available on the Internet. Without the Notice, there is danger that some shareholders may not be aware of how to access those materials, which could lead to solicitation of proxies without full and adequate disclosure by the soliciting party of the matters for which proxy authority is being sought resulting in uninformed voting decisions and possible abuses in the voting process. Not requiring disclosure of the information required by Rule 20a-1 and Schedule 14A in proxy statements would harm investors by denying them information that may be useful in making decisions, such as with regard to the election of directors.

The proposed amendments seek to improve the notice and access model for furnishing proxy materials to shareholders. The change that would affect burden estimates relates to the permission that would be provided by proposed amendments to include explanatory materials. These materials would not be required, but may help improve investors understanding of the Notice that they are receiving by providing an explanation of the process of how they can receive and review the proxy materials and vote.

**7. INCONSISTENCIES WITH GUIDELINES IN 5 C.F.R. 1320.5(d)(2)**

None.

**8. CONSULTATION OUTSIDE THE AGENCY**

The Commission has issued a release soliciting comment on the new “collection of information” requirements and the associated paperwork burdens. A copy of this release is attached. Comments on Commission releases are generally received from registrants, investors and other market participants. In addition, the Commission and staff of the Division of Corporation Finance and the Division of Investment Management participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission will consider all comments received.

**9. PAYMENT OR GIFTS TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY**

The information in each of the collections of information discussed above is made publicly available.

**11. JUSTIFICATION FOR SENSITIVE QUESTIONS**

Not applicable.

**12/13. ESTIMATES OF HOUR AND COST BURDENS**

The paperwork burden estimates associated with the proposal include the burdens attributable to preparing and reporting information to the Commission and retaining records, but do not include the burden associated with using such information for other purposes. These estimates represent the average burden for all companies, both large and small. For each estimate, we calculate that a portion of the burden will be carried by the company internally, and the other portion will be carried by outside professionals retained by the company. The portion of the burden carried by the company internally is reflected in hours, while the portion of the burden carried by outside professionals

retained by the company is reflected as a cost. The burdens have been calculated by multiplying the estimated number of annual responses we believe will be generated by the estimated average number of hours each entity will spend complying with the requirements of the rules.

### Rule 20a-1

The notice and access model requires all registered investment companies to post their proxy materials on an Internet Web site and furnish Notice of the materials' availability to shareholders. Rule 20a-1 under the Investment Company Act requires registered investment companies to comply with Exchange Act Regulations 14A or 14C, as applicable. The annual responses to Rule 20a-1 reflect the number of proxy and information statements that are filed by registered investment companies. This supporting statement includes the burden estimates for complying with the existing notice and access model for furnishing proxy materials to shareholders, including preparation of Notices, maintaining Web sites, maintaining records of shareholder preferences, and responding to requests for copies. These existing burden estimates, along with the burden estimates under the current proposed rules, will be added for purposes of calculating the burden estimates for complying with Rule 20a-1.

We estimate that the annual burden required to prepare and transmit a Notice to be approximately 1.5 reporting hours. This estimate is based on the PRA burden for issuers other than investment companies to prepare and transmit a Notice. We estimate that 75% of the burden is prepared by the investment company and that 25% of the burden is prepared by outside counsel retained by the investment company at an average cost of approximately \$400 per hour. Based on the number of proxy filings from registered investment companies received by the Commission during 2008, we would expect approximately 1,225 Notices to be filed annually. We estimate that the total annual reporting burden for Rule 20a-1 should be increased by approximately 1,378 hours<sup>8</sup> and that the annual cost would be increased by approximately \$735,000<sup>9</sup> for the services of outside professionals to comply with the disclosure provisions of the existing notice and access model.

In addition, registered investment companies must permit shareholders to make permanent elections to receive proxy materials in paper or by e-mail. An investment company issuer must maintain records as to which of its shareholders have made such an election. We believe that many investment company issuers already maintain similar records to keep track of their shareholders who have affirmatively consented to electronic delivery consistent with past Commission guidance,<sup>10</sup> as well as their shareholders who

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<sup>8</sup> 1,225 Notices x 1.5 hours per Notice x 0.75 = 1,378 hours.

<sup>9</sup> 1,225 Notices x \$400 per hour x 1.5 hours per Notice x 0.25 = \$735,000.

<sup>10</sup> Use of Electronic Media for Delivery Purposes, Release No. 33-7233 (Oct. 6, 1995) [60 FR 53458] provided guidance on electronic delivery of prospectuses, annual reports to security holders and proxy solicitation materials under the Securities Act, the Exchange Act, and the Investment Company Act.

have consented to householding of proxy materials pursuant to Rule 14a-3(e).<sup>11</sup> For purposes of the Paperwork Reduction Act, we estimate that a typical investment company issuer will spend an additional five hours per year, or a total of 6,125 hours, to maintain these records.<sup>12</sup> Because this is an internal recordkeeping requirement, we do not expect a cost for hiring outside counsel.

Further, the notice and access model also requires an intermediary to prepare its own Notice and provide it to beneficial owners. We expect that all of the factual information required to appear in the Notice will become available as part of the ordinary preparations for a shareholder meeting. This Notice would be substantially the same as a registered investment company's Notice, but will be modified by the intermediaries to provide information that is relevant to beneficial owners rather than registered holders. According to Broadridge Financial Solutions, Inc. ("Broadridge"), it processes more than 95% of proxy materials that are sent to beneficial owners on behalf of intermediaries, reducing the need to create multiple intermediary Notices.<sup>13</sup> In addition, the investment company issuer or other soliciting person will provide the majority of information required in the intermediary's Notice. Therefore, we estimate that the additional burden to prepare an intermediary's Notice will be approximately one hour, or a total annual burden of 1,225 hours for all investment company proxy solicitations.<sup>14</sup>

Finally, intermediaries must also maintain records to keep track of which beneficial owners have made a permanent election to receive proxy materials in paper or by e-mail. Like registered investment companies, intermediaries already maintain records of shareholders' affirmative consents to electronic delivery and householding of proxy materials. In addition, intermediaries maintain records as to whether their beneficial owner customers have objected, or not objected, to disclosure of their identities to the investment company issuer. Like investment company issuers, we believe this will result in an additional annual burden of five hours, or a total of 6,125 hours, for intermediaries.<sup>15</sup>

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<sup>11</sup> 17 CFR 240.14a-3(e).

<sup>12</sup> 1,225 filings with an estimated one filing per issuer or soliciting person x 5 hours = 6,125 hours. This estimate is based on the PRA burden for issuers other than investment companies to maintain these records.

<sup>13</sup> See Broadridge Notice & Access, Statistical Overview of Use with Beneficial Shareholders (as of May 31, 2009) at <http://www.broadridge.com/notice-and-access/NAStatsStory.pdf> (Broadridge is the largest provider of brokerage processing services with respect to beneficial owners holding through a broker or similar intermediary and has provided detailed statistical information on the use of the notice and access model).

<sup>14</sup> 1,225 notices x 1 hour per Notice = 1,225 hours. We do not include a cost to intermediaries for hiring outside counsel because we expect that the substantive contents of an intermediary's Notice would be provided by the issuer or other soliciting person. The estimates assume that Broadridge will continue to process over 95% of the proxy solicitations on behalf of intermediaries, thereby eliminating the need for each intermediary to prepare a separate Notice.

<sup>15</sup> This estimate is based on the PRA burden for intermediaries for issuers other than investment companies to maintain records.

We estimate that the total annual PRA reporting burden for Rule 20a-1 should be increased by 14,853 hours and \$735,000 in professional costs to reflect compliance with the existing notice and access model.

Under the proposed amendments to the notice and access model, a registered investment company or other soliciting person will be permitted, but not required, to include explanatory materials with the Notice. We expect that this information will generally consist of approximately one or two paragraphs of text. For purposes of the PRA, we estimate the annual burden if a soliciting person chooses to prepare the explanatory materials would be approximately 0.5 reporting hours per investment company. We estimate that 75% of the burden would be borne by the investment company and that 25% of the burden would be borne by outside counsel retained by the investment company at an average cost of approximately \$400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. We estimate that the proposed amendments will increase the PRA burden estimates under Rule 20a-1 by approximately 459 hours and \$61,250 in professional costs.

We estimate that the total PRA burden estimates under Rule 20a-1 will increase by approximately 15,312 hours and \$796,250. These burden estimates reflect compliance with the existing notice and access model and the proposed amendments.

14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

We estimate costs to the federal government will be \$50,000 per form.

15. EXPLANATION OF CHANGES IN BURDEN

We estimate that the total PRA burden estimates under Rule 20a-1 will increase by approximately 15,312 hours and \$796,250. These burden estimates reflect compliance with the existing notice and access model and the proposed amendments.

16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. EXPLANATION AS TO WHY EXPIRATION DATE WILL NOT BE DISPLAYED

Not applicable.

18. EXCEPTIONS TO CERTIFICATION

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.