

**SUPPORTING STATEMENT FOR  
Rule 17a-10**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 17(a) of the Investment Company Act of 1940 (the “Act”), generally prohibits affiliated persons of a registered investment company (“fund”) from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.<sup>1</sup> Section 2(a)(3) of the Act defines “affiliated person” of a fund to include its investment advisers.<sup>2</sup> Rule 17a-10 permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (e.g., other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a-10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund’s portfolio.<sup>3</sup> This requirement regarding the

---

<sup>1</sup> 15 U.S.C. 80a-17(a).

<sup>2</sup> 15 U.S.C. 80a-2(a)(3)(E).

<sup>3</sup> 17 CFR 270.17a-10(a)(2).

prohibitions and limitations in advisory contracts of subadvisors relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 (“PRA”).<sup>4</sup>

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

Funds must include in their subadvisory contracts the provisions required under rule 17a-10(a)(2) in order to rely on the exemptions in rule 17a-10 to ensure that the subadviser that engages in the transaction does not influence the fund’s investment decision to engage in the transaction.

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

To the extent the rule includes recordkeeping requirements, the Electronic Signatures in Global and National Commerce Act<sup>5</sup> 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 is not aware of any duplicate reporting or recordkeeping requirements concerning rule 17a-10.

## **5. Effect on Small Entities**

Rule 17a-10’s exemptive relief is conditioned upon funds including certain provisions in their advisory contracts to ensure that fund interests are the primary consideration for otherwise prohibited transactions. These provisions apply equally to all funds, including small entities.

## **6. Consequences of Less Frequent Collection**

Rule 17a-10 requires that a fund’s subadvisory contract be either initially drafted or

---

<sup>4</sup> 44 U.S.C. 3501.

<sup>5</sup> P.L. 106-229, 114 Stat. 464 (June 30, 2000).

amended to qualify for the rule's exemption. This is not a recurring requirement, and therefore less frequent collection is not possible.

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

Not applicable. The collection is not inconsistent with 5 CFR 1320.5(d)(2).

**8. Consultation Outside the Agency**

The Commission requested public comment on the collection of information requirements in rule 17a-10 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 at the Division of Investment Management 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 following estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

The staff assumes that all funds existing in 2003 amended their advisory contracts following the amendments to rule 17a-10 that year that conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.<sup>6</sup> Staff also assumes that funds that came into existence after 2003 included the contractual requirements in rule 17a-10 in their subadvisory agreements and therefore there is no continuing burden for those funds.

Based on an analysis of fund filings, the staff estimates that approximately 252 fund portfolios enter into new subadvisory agreements each year.<sup>7</sup> Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17a-10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f-3, 12d3-1, and 17e-1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a-10 for this contract change would be 0.75 hours.<sup>8</sup> Assuming that all 252 funds that enter into new subadvisory contracts each year include in their contract the provisions required by the rule, we estimate that the rule's contract requirement will result in 189 burden hours annually, with an associated cost of approximately \$59,724.<sup>9</sup>

---

<sup>6</sup> We assume that funds formed after 2003 that intended to rely on rule 17a-10 would have included the required provision as a standard element in their initial subadvisory contracts.

<sup>7</sup> Based on information in Commission filings, we estimate that 42.5 percent of funds are advised by subadvisers.

<sup>8</sup> This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

<sup>9</sup> These estimates are based on the following calculations: 0.75 hours × 252 portfolios = 189 burden hours; \$316 per hour × 189 hours = \$59,724 total cost. The Commission staff's

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

We estimate that there is no cost burden associated with rule 17a-10, other than the costs of the contract modification burden identified in Item 12 of this Supporting Statement.

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

There are no costs to the Federal Government associated with rule 17a-10.

**15. Explanation of Changes in Burden**

Rule 17a-10 has a current annual burden of 450 hours. The hour burden associated with rule 17a-10 has decreased by 261 hours to a total of 189 hours since our last burden analysis. This decrease is due to a decrease in the estimated number of funds entering into new subadvisory agreements each year.

**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.

---

estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The \$316 per hour figure for an attorney is from the Securities Industry and Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2009*, 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.