

**SUPPORTING STATEMENT
FOR RULE 32a-4**

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 32(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-31(a)(2)) (“Investment Company Act” or “Act”) requires that the selection of a registered management investment company’s or registered face-amount certificate company’s (collectively, “funds”) independent public accountant be submitted to shareholders for ratification or rejection. In 2001, the Commission adopted rule 32a-4 under the Investment Company Act (17 CFR 270.32a-4) to exempt a fund from this requirement if the fund has an audit committee consisting entirely of independent directors to oversee the fund’s auditor.¹ The rule permits continuing oversight of a fund’s accounting and auditing processes by an independent audit committee in place of a shareholder vote. Commenters on the proposed rule agreed with the Commission that shareholder ratification had become largely perfunctory, and that an independent audit committee can exercise oversight that is more meaningful.

Under the rule, a fund is exempt from having to seek shareholder approval of its independent public accountant, if (i) the fund’s board of directors establishes an audit committee composed solely of independent directors with responsibility for overseeing the fund’s accounting and auditing processes,² (ii) the fund’s board of directors adopts an audit committee charter setting forth the committee’s structure, duties, powers and

¹ Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3759 (Jan. 16, 2001)] (“Adopting Release”).

² Rule 32a-4(a).

methods of operation, or sets forth such provisions in the fund's charter or bylaws,³ and (iii) the fund maintains a copy of the audit committee charter, and any modifications to the charter, permanently in an easily accessible place.⁴ The rule does not require that an audit committee perform daily management or supervision of a fund's operations.⁵ Rule 32a-4 imposes certain collection of information burdens on funds that choose to rely on the exemption.

2. **Purpose of the Information Collection**

In order to rely on rule 32a-4, a fund's board of directors must adopt an audit committee charter and must preserve that charter, and any modifications to the charter, permanently in an easily accessible place. The purpose of these conditions is to ensure that Commission staff will be able to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the rule.

3. **Role of Improved Information Technology**

Rule 32a-4 does not require funds to file any documents with the Commission, but does require funds to retain and preserve an audit committee charter if they adopt one. Rule 31a-2(f) under the Act permits funds to maintain many types of records on micrographic and electronic storage media.

³ Rule 32a-4(b).

⁴ Rule 32a-4(c).

⁵ See Audit Committee Disclosure, Exchange Act Release No. 41987 (Oct. 7, 1999) [64 FR 55648 (Oct. 14, 1999)] at text following n.26 ("We recognize that how audit committees function may vary from company to company, and companies need flexibility to determine all of the specific duties and functions of their audit committees.").

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 32a-4 does not require duplicative reporting or recordkeeping.

5. **Effect on Small Entities**

The recordkeeping requirements of rule 32a-4 do not distinguish between large and small entities. The Commission does not believe that compliance with rule 32a-4 is unduly burdensome for small funds.

6. **Consequences of Less Frequent Collection**

Rule 32a-4 includes as a condition to the exemption provided by the rule the requirement that the fund's board of directors adopt an audit committee charter and preserve that charter, and any modifications to the charter, permanently in an easily accessible place. If funds relying on the exemption were not required to adopt and preserve an audit committee charter, Commission staff would not be able to monitor the duties and responsibilities of an audit committee formed as a condition of the exemption, nor would it be able to determine fund compliance with the conditions of the rule for reliance on the exemption.

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

Rule 32a-4 requires, as a condition to the exemption provided by the rule, that the fund permanently preserve the audit committee charter, and any modifications to the charter. The Commission believes that long-term retention of the charter is necessary because funds may rely on the exemption provided by the rule for indefinite periods of

time. Commission staff thus may need to review the information available in the audit committee charter many years after its adoption or modification.

8. Consultation Outside the Agency

The Commission proposed rule 32a-4 for public comment before its adoption in January 2001 and made changes to the rule based on the comments that it received from the public.⁶ The Commission considered all comments and suggestions and determined to adopt the rule's information collection requirements as proposed.⁷ The Commission requested public comment on the collection of information requirements in rule 32a-4 before it submitted this request for extension and approval to OMB. The Commission received no comments in response to this request.

The Commission and staff of the Division of Investment Management also participate in an ongoing dialogue with representatives of the fund industry through public conferences, meetings, and informal exchanges. These forums provide the Commission and the staff useful means to identify and address paperwork burdens that may confront the industry.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

⁶ See Adopting Release, supra note 1.

⁷ Id.

12. Estimate of Hour Burden

Each fund that chooses to rely on rule 32a-4 incurs two collection of information burdens. The first, related to the board of directors' adoption of the audit committee charter, occurs once, when the committee is established. The second, related to the fund's maintenance and preservation of a copy of the charter in an easily accessible place, is an ongoing annual burden. Commission staff estimates that on average the board of directors takes 15 minutes to adopt the audit committee charter. Commission staff has estimated that with an average of 8 directors on the board,⁸ total director time to adopt the charter is 2 hours. Combined with an estimated 1 hour of paralegal time to prepare the charter for board review, the staff estimates a total one-time collection of information burden of 3 hours for each fund. Once a board adopts an audit committee charter, a fund generally maintains it in a file cabinet or as a computer file. Commission staff has estimated that there is no annual hourly burden associated with maintaining the charter in this form.⁹

Because virtually all existing funds have now adopted audit committee charters, the annual one-time collection of information burden associated with adopting audit committee charters is limited to the burden incurred by newly established funds.

Commission staff estimates that fund sponsors establish approximately 117 new funds

⁸ This estimate is based on staff discussions with a representative of an entity that surveys funds and calculates fund board statistics based on responses to its surveys.

⁹ No hour burden related to such maintenance of the charter was identified by the funds the Commission staff surveyed. Commission staff understands that many audit committee charters have been significantly revised after their adoption in response to the Sarbanes-Oxley Act (Pub. Law. No. 107-204, 116 Stat. 745) and other developments. However, the costs associated with these revisions are not attributable to the requirements of rule 32a-4.

each year,¹⁰ and that all of these funds will adopt an audit committee charter in order to rely on rule 32a-4. Thus, Commission staff estimates that the annual one-time hour burden associated with adopting an audit committee charter under rule 32a-4 going forward will be approximately 351 hours.¹¹

As noted above, all funds that rely on rule 32a-4 are subject to the ongoing collection of information requirement to preserve a copy of the charter in an easily accessible place. This ongoing requirement, which Commission staff has estimated has no hourly burden, applies to new funds that adopt an audit committee charter each year and to all of the funds that have previously adopted the charter and continue to maintain it.

Funds incur internal costs associated with the one-time collection of information burden related to adopting an audit committee charter. As noted above, Commission staff estimates that it takes approximately 2 hours of aggregate directors' time at \$4000 per hour, and 1 hour of paralegal time at \$168 per hour,¹² to adopt an audit committee charter. Thus, Commission staff estimates a total internal cost of \$8168 per fund to adopt the charter¹³ and a total annual cost of \$955,656.¹⁴

¹⁰ This estimate is based on the number of Form N-8As filed from January 2010 through December 2010.

¹¹ This estimate is based on the following calculation: (3.0 burden hours for establishing charter × 117 new funds = 351 burden hours).

¹² The \$168/hour figure for a paralegal is from SIFMA's Management & Professional Earnings in the Securities Industry 2010, 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.

¹³ This estimate is based on the following calculations: (\$4000 per hour for directors' time × 2 hours = \$8000); (\$8000 + \$168 = \$8168).

¹⁴ This estimate is based on the following calculations: (\$8168 cost of hour burden per fund × 117 new funds = \$955,656).

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

13. Estimate of Total Annual Cost Burden

When funds adopt an audit committee charter in order to rely on rule 32a-4, they also may incur one-time costs related to hiring outside counsel to prepare the charter. Commission staff estimates that those costs average approximately \$1500 per fund.¹⁵

As noted in the previous section, Commission staff estimates that approximately 117 new funds each year will adopt an audit committee charter in order to rely on rule 32a-4. Thus, Commission staff estimates that the ongoing annual cost burden associated with rule 32a-4 in the future will be approximately \$175,500.¹⁶

These estimates of average costs 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.

14. Estimate of Cost to the Federal Government

There are no costs to the Federal Government associated with the collection of information requirements of rule 32a-4, nor any other costs to the Federal Government.

¹⁵ Costs may vary based on the individual needs of each fund. However, based on the staff's conversations with outside counsel that prepare these charters, legal fees related to the preparation and adoption of an audit committee charter usually average \$1500 or less. The Commission also understands that the ICI has prepared a model audit committee charter, which most legal professionals use when establishing audit committees, thereby reducing the costs associated with drafting a charter.

¹⁶ This estimate is based on the following calculations: (\$1500 cost of adopting charter × 117 newly established funds = \$175,500).

15. Explanation of Changes in Burden

The decrease in the number of burden hours associated with the rule arises from a decrease in the estimated number of funds that will rely on the rule each year. As noted above, because virtually all existing funds have now adopted audit committee charters, the annual one-time collection of information burden associated with adopting audit committee charters is limited to the burden incurred by newly established funds. Our estimate of the number of new funds formed each year has decreased from 153 funds (as estimated in the last collection of information submission for rule 32a-4) to 117 funds. As noted above, the ongoing collection of information requirement to preserve a copy of the charter, while applying to all existing funds and new funds, is estimated by Commission staff to have no hourly burden. Therefore, existing funds are not included within the estimate of the number of respondents or responses to the collection of information requirements of rule 32a-4.

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.