

**SUPPORTING STATEMENT  
for the Paperwork Reduction Act  
Information Collection  
“ Rule 18f-3”**

**A. JUSTIFICATION**

**1. Information Collection Necessity**

Section 18(f)(1)<sup>1</sup> of the Investment Company Act of 1940<sup>2</sup> (the “Investment Company Act” or “Act”) prohibits registered open-end management investment companies (“funds”) from issuing any senior security. Rule 18f-3 under the Act<sup>3</sup> exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a “multiple class fund”) if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare, and fund directors must approve, a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges (“rule 18f-3 plan”).<sup>4</sup> Approval of the plan must occur before the fund issues any shares of multiple classes and whenever the fund materially amends the plan. In approving the plan, the fund board, including a majority of the independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

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<sup>1</sup> 15 U.S.C. 80a-18(f)(1).

<sup>2</sup> 15 U.S.C. 80a.

<sup>3</sup> 17 CFR 270.18f-3.

<sup>4</sup> 17 CFR 270.18f-3(d).

## **2. Information Collection Purpose**

The requirement that the fund prepare and directors approve a written rule 18f-3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

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

Rule 18f-3 does not require a multiple class fund to file its rule 18f-3 plan with the Commission. The registration statement for a fund, however, requires the fund to file the plan as an exhibit.<sup>5</sup> Absent a hardship exemption, a fund transmits its registration statement and exhibits electronically to the Commission via the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.<sup>6</sup> EDGAR is designed to automate the filing with and processing by the Commission, and dissemination to the public of full disclosure filings.

## **4. Efforts to Identify Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and re-evaluates those requirements whenever it proposes a rule or form or a change in either. The paperwork requirements of preparing and approving rule 18f-3 plans are not duplicated elsewhere.

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<sup>5</sup> Form N-1A, Item 28(n); see 17 CFR 274.11A (description of form).

<sup>6</sup> Regulation S-T, rule 101(a) [17 CFR 232.101(a)] (registration statements); rule 102 [17 CFR 232.102] (exhibits).

**5. Effect on Small Entities**

As required by the Regulatory Flexibility Act,<sup>7</sup> the Commission reviews all rules periodically to identify ways to minimize reporting and recordkeeping requirements that may affect small businesses. The paperwork requirements of rule 18f-3 are the same for all multiple class funds, including small entities. As explained in item 12, we estimate that each affected registrant spends only 8 hours per response, on average, in preparing and approving its rule 18f-3 plan. The Commission believes that this burden does not have a significant impact on multiple class funds that are small entities.

**6. Consequences of Less Frequent Collection**

The rule's information collection requirements are not triggered by the passage of time, but by events within the control of funds. Rule 18f-3 requires a multiple class fund to prepare and its board to approve a rule 18f-3 plan before the fund issues any shares of multiple classes, and whenever the fund materially amends the plan. If a plan was not prepared and approved before shares of multiple classes were issued and before the plan was materially amended, conflicts of interests between classes could go undetected. Without a plan, there would be no assurance that the board had considered all material differences between classes, or any record of the information the board considered.

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

Not applicable.

**8. Consultation Outside the Agency**

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

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<sup>7</sup> 5 U.S.C. 601.

**9. Payment or Gift to Respondents**

Not applicable.

**10. Assurance of Confidentiality**

Not applicable.

**11. Sensitive Questions**

Not applicable.

**12. Hour Burden Estimate**

There are approximately 5655 multiple class funds offered by 1020 registrants.<sup>8</sup> Based on a review of typical rule 18f-3 plans, the Commission's staff estimates that the 1020 registrants together make an average of 510 responses each year to prepare and approve a written rule 18f-3 plan, requiring approximately 8 hours per response and a total of 4080 burden hours per year in the aggregate.<sup>9</sup> The staff estimates that preparation of the rule 18f-3 plan may require 5 hours of the services of an attorney employed by the fund, at a cost of approximately \$354 per hour for professional time,<sup>10</sup> and approval of the plan may require 3 hours of the services of the board of directors, at a cost of

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<sup>8</sup> This estimate is based on data from Form N-SAR, the semi-annual report that funds file with the Commission. In previous years, the staff estimated that each multiple class fund prepared and approved a rule 18f-3 plan. However, the staff has revised this estimate to reflect its belief that most registrants prepare and approve a single rule 18f-3 plan for all series funds offered by the registrants.

<sup>9</sup> The estimate reflects the assumption that each registrant prepares and approves a rule 18f-3 plan every two years when issuing a new fund or new class or amending a plan (or that 510 of all 1020 registrants prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 5 hours per plan (or 2550 hours for 510 registrants annually), and the time required to approve a plan is an additional 3 hours per plan (or 1530 hours for 510 registrants annually).

<sup>10</sup> This hourly rate estimate is derived from annual salaries reported in: Securities Industry and Financial Markets Association, Management and 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.

approximately \$4000 per hour.<sup>11</sup> The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately \$7,022,700 ((5 hours x 510 responses x \$354 = \$902,700) + (3 hours x 510 responses x \$4000 = \$6,120,000)). These estimates are made solely for the purposes of the Paperwork Reduction Act of 1995, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

**13. Total Annual Cost Burden Estimate**

We estimate that there is no cost burden of rule 18f-3 apart from the cost of the paperwork burden identified in item 12.

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

There are no costs to the Commission associated with rule 18f-3 because the rule does not require documents to be reviewed by Commission staff.

**15. Changes in Burden Explanation**

The estimated annual burden of 4080 hours represents a decrease of 1520 hours from the prior estimate of 5600 hours. The decrease in burden hours is attributable to changes in the estimates of the average hour burden per response and the number of responses that are submitted pursuant to the rule.

**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.

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<sup>11</sup> This hourly rate estimate is derived from fund representatives.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.