

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission
“Rule 35d-1”

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 35(d) of the Investment Company Act of 1940 (“Investment Company Act”)¹ prohibits a registered investment company from adopting as part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading and authorizes the Commission, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.² Rule 35d-1 under the Investment Company Act defines as “materially deceptive and misleading” for purposes of Section 35(d), among other things, a name suggesting that a registered investment company or series thereof (a “fund”) focuses its investments in a particular type of investment or investments, in investments in a particular industry or group of industries, or in investments in a particular country or geographic region, unless, among other things, the fund adopts a certain investment policy.³ Rule 35d-1 further requires either that the investment policy is fundamental or that the fund has adopted a policy to provide its shareholders with at least 60 days prior notice of any change in the investment policy (“notice to shareholders”).

¹ 15 U.S.C. 80a-1 et seq.

² 15 U.S.C. 80a-34(d).

³ 17 CFR 270.35d-1.

2. Purpose of the Information Collection

The rule's notice to shareholders provision is intended to ensure that when shareholders purchase shares in a fund based, at least in part, on its name, and with the expectation that it will follow the investment policy suggested by that name, they will have sufficient time to decide whether to redeem their shares in the event that the fund decides to pursue a different investment policy.

3. Role of Improved Information Technology

The Commission's electronic filing system ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit their filings to the Commission electronically. This automation has increased the speed, accuracy and availability of information, generating benefits to investors and financial markets. The rule, however, does not require that a fund file the notice to shareholders with the Commission.

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. The information required by rule 35d-1 is not generally duplicated elsewhere.

5. Effect on Small Entities

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.⁴ The current disclosure requirements under the rule do not distinguish between small entities and other funds. The burden on smaller funds may be

greater than for larger funds. These costs could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. The Commission believes, however, that imposing different requirements on smaller funds would not be consistent with investor protection and the purposes of the disclosure requirements.

6. Consequences of Less Frequent Collection

The notice to shareholders provision of rule 35d-1 provides investors with 60 days prior notice of any change to an investment policy covered by the rule, thereby providing investors with time to decide whether to redeem their shares before the change to the investment policy takes effect. Less frequent collection would impair investors' ability to redeem shares in advance of a change to an investment policy covered by the rule.

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

This collection is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The Commission and the Division of Investment Management staff 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 with a means of ascertaining and acting upon paperwork burdens that may confront the industry. The Commission requested public comment on the collection of information requirements in rule 35d-1 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

⁴ 5 U.S.C. 601 et seq.

9. Payment or Gift to Respondents

No payment or gift to respondents is provided.

10. Assurance of Confidentiality

No assurance of confidentiality is provided.

11. Sensitive Questions

No questions of a sensitive nature are involved.

12. Estimate of Hour Burden

The following estimate of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995⁵ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with rule 35d-1 is mandatory for every fund that has a name that is covered by the rule. Responses to the disclosure requirements will not be kept confidential.

The Commission believes that notices to shareholders meeting the requirements of rule 35d-1 are typically short, one-page documents that may be enclosed with other written materials sent to shareholders, such as prospectuses, annual and semi-annual reports, and account statements. The number of burden hours spent preparing and arranging delivery of these notices therefore is low. The Commission estimates that the annual burden associated with the notice to shareholders requirement of the rule to be 20 hours per affected fund. The Commission anticipates that each affected respondent would incur these burden hours only once.

⁵ 44 U.S.C. 3501 et seq.

The Commission estimates that there are currently approximately 9,800 open-end management investment companies and series of such investment companies and approximately 800 closed-end investment companies that are registered with the Commission and would fall within the definition of “Fund” contained in rule 35d-1.⁶ The Commission estimates that there are approximately 8,800 funds that have names that are covered by the rule.⁷ The Commission further estimates that 1% of these funds (88 funds) will, within the next three years, provide a notice to shareholders pursuant to a policy adopted in accordance with this rule. Therefore, the Commission estimates that, on average, approximately 29 funds per year will provide a notice to shareholders pursuant to a policy adopted in accordance with this rule. The Commission estimates that a fund would spend an average of 20 hours complying with the notice to shareholders alternative provided by the rule, for an annual total of 580 hours.⁸

The Commission, using an hourly wage rate of \$354 for attorneys,⁹ estimates that the total annual cost of the hour burden imposed by the notice to shareholders provision under rule 35d-1 is \$205,320.¹⁰

⁶ This estimate is derived from a variety of sources, including the Investment Company Institute Monthly News Release, the Lipper Closed-End Fund Performance Analysis Service, and Commission records.

⁷ The Commission previously estimated that 83% have names that are covered by the rule. See Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509, 8515 (Feb. 1, 2001)]. Using this estimate, the Commission estimates that approximately 8,800 funds have names that are covered by the rule (10,600 funds x 83% = 8,798).

⁸ 29 funds x 20 hours per fund = 580 hours.

⁹ The industry burden is calculated by multiplying the total annual hour burden to comply with rule 35d-1 by the estimated hourly wage rate of \$354. The estimated wage figure is based on published rates for attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an

13. Estimate of Total Annual Cost Burden

Cost burden is the cost of services purchased to comply with rule 35d-1, such as for the services of computer programmers, outside counsel, financial printers, and advertising agencies. The cost burden does not include the cost of the hour burden discussed in Item 12 above. The Commission currently attributes no external cost burden to rule 35d-1.

14. Estimate of Cost to the Federal Government

We expect any burdens to the federal government as a result of the notice to shareholders provision to be minimal and do not expect an increase in staff time or annual operating costs in connection with this collection of information requirements.

15. Explanation of Changes in Burden

The Commission continues to estimate burden hours of 580 and that there is no external cost burden associated with this rule.

16. Information Collection Planned for Statistical Purposes

This collection does not involve statistical methods.

17. Approval to not Display Expiration Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification Statement

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

effective hourly rate of \$354. See Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2010.

The collection of information will not employ statistical methods.

¹⁰ 580 hours x \$354 per hour = \$205,320.