

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 17e-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 17(e)(2)(A) of the Investment Company Act of 1940 (the “Investment Company Act”)¹ limits the remuneration a broker affiliated with a registered investment company (“fund”) may receive in connection with the sale of securities to or by the fund or controlled company thereof, to no more than “the usual and customary broker’s commission if the sale is effected on a securities exchange.”² Rule 17e-1 under the Investment Company Act deems a remuneration as “not exceeding the usual and customary broker’s commission” for purposes of Section 17(e)(2)(A) if, among other things, the fund’s board of directors has adopted procedures reasonably designed to provide that the remuneration to the affiliated broker is reasonable and fair amount compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary.³ In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures (“review requirement”). Rule 17e-1(d) also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of

¹ 15 U.S.C. 80a-1 *et seq.*

² 15. U.S.C. 80a-17(e)(2)(A).

³ 17 CFR 270.17e-1.

each transaction subject to the rule setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board (“recordkeeping requirement”).

Rule 17e-1 conditionally exempts funds from having to comply with the review requirement and the recordkeeping requirement when an affiliated subadviser that serves as a broker is not in a position to influence the fund’s decision to participate in the transaction. To qualify for this exemption, rule 17e-1 requires, in part, that the advisory contracts of both the subadviser that enters into the transaction, and the subadviser that recommends that the fund engage in the transaction prohibit the subadvisers from consulting with one another concerning securities transactions of the fund.⁴ The rule’s conditions are designed to limit the exemptions to those transactions in which the transacting subadviser has neither the ability nor the incentive to influence the investment decision of the participating fund.⁵

2. Purpose of the Information Collection

The recordkeeping requirements under rule 17e-1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker’s commission. Without the recordkeeping requirements, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e-1. Commission rules also require funds to amend their subadvisory contracts before they can rely on rule 17e-1’s exemption to ensure that the subadviser that engages in the transaction does not influence the fund’s decision to participate in the transaction.

⁴ See 17 CFR 270.17a-10(a)(2); 17 CFR 270.17e-1(b)(3); 17 CFR 270.17e-1(d)(2).

⁵ See Investment Company Act Release 25,888 (Jan. 14, 2003) [68 FR 3142, 3144 (Jan. 22, 2003)].

3. Role of Improved Information Technology

To the extent the rule includes recordkeeping requirements, the Electronic Signatures in Global and National Commerce Act⁶ and the conforming amendments to recordkeeping rules under the Investment Company Act permit funds to maintain records electronically.

4. Efforts to Identify Duplication

Section 31(a) of the Investment Company Act and rules 31a-1 and 31a-2 thereunder, require investment companies to maintain and preserve records similar to those required to be kept under rule 17e-1. Rule 17e-1 does not require that duplicate records be kept, but reiterates the requirement to maintain and preserve such records. The requirements regarding limitations in the subadvisers' contracts are similar to conditions in exemptive rules 10f-3,⁷ 12d3-1,⁸ and 17a-10.⁹ To the extent that a fund relies on any one of these rules, its subadviser may use the same contract language to satisfy the comparable condition in the other rules.

5. Effect on Small Entities

The recordkeeping requirements of rule 17e-1 apply equally to all funds subject to the rule, regardless of size. The burden on smaller investment companies may be greater than for larger investment companies. This burden includes the cost of amending subadvisory contracts, reviewing transactions, and maintaining records. The Commission believes, however, that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of the rule's requirements. The Commission reviews all

⁶ P.L. 106-229, 114 Stat. 464 (June 30, 2000).

⁷ 17 CFR 270.10f-3.

⁸ 17 CFR 270.12d3-1.

⁹ 17 CFR 270.17a-10.

rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

6. Consequences of Less Frequent Collection

Rule 17e-1(c) requires the investment company to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years a written record of each transaction subject to the rule setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. Less frequent recordkeeping requirements would impair the Commission's ability to ascertain compliance with the rule. Rule 17e-1 also requires that a fund's subadvisory contract either be initially drafted or amended to qualify for the rule's exemption. This is not a recurring requirement; less frequent collection is not possible.

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

Rule 17e-1 requires funds to preserve certain records for six years and other records permanently. We believe that the long-term retention of records is necessary to carry out our examination and enforcement responsibilities, and our mandate to ensure that the Investment Company Act's provisions are legally enforceable. We periodically inspect the operations of funds to ensure compliance with the rules and regulations under the Investment Company Act; however, each fund may be inspected only at intervals of several years due to limits on our resources. Furthermore, Congress has placed no time limit on the prosecution of persons engaged in certain types of conduct that violate the securities laws. For these reasons, we often

need information relating to events or transactions that occurred years ago. In Section 31(a) of the Investment Company Act, Congress specifically authorized the Commission to require funds to maintain and preserve books and records for such periods as the Commission may prescribe by rules.¹⁰ Computerized record storage has made long-term retention of records less burdensome.

8. Consultation Outside the Agency

The Commission and the staff of 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. The Commission requested public comment on the collection of information requirements in rule 17e-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 this request.

9. Payment or Gift to Respondents

No payment or gift to respondents was provided.

10. Assurance of Confidentiality

No assurance of confidentiality was provided.

11. Sensitive Questions

No questions of a sensitive nature are involved.

12. Estimate of Hour Burden

¹⁰ 15 U.S.C. 80a-30(a).

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995¹¹ and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Based on an analysis of fund filings, the staff estimates that approximately 775 fund portfolios enter into subadvisory agreements each year.¹² 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 17e-1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3-1, 10f-3, and 17a-10, 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 to all four rules. Therefore, we estimate that the burden allocated to rule 17e-1 for this contract change would be 0.75 hours.¹³ Assuming that all 775 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 581 burden hours annually, with an associated cost of approximately \$220,199.¹⁴

¹¹ 4 U.S.C. 3501 *et seq.*

¹² Based on information in Commission filings, we estimate that 44.4 percent of funds are advised by subadvisers.

¹³ 3 hours ÷ 4 rules = 0.75 hours.

¹⁴ These estimates are based on the following calculations: (0.75 hours × 775 portfolios = 581 burden hours); (\$379 per hour × 581 hours = \$220,199 total cost). The Commission's 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 estimated wage figure is based on published rates for in-house attorneys, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and

Based on an analysis of fund filings, we estimate that approximately 1,768 funds use at least one affiliated broker. Based on conversations with fund representatives, the staff estimates approximately 40 percent of transactions that occur under the rule 17e-1 would be exempt from its recordkeeping and review requirements. This would leave approximately 1,061 funds¹⁵ still subject to the rule's recordkeeping and review requirements. Based on conversations with fund representatives, we estimate that the burden of compliance with rule 17e-1 is approximately 40 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e-1 to be approximately 42,440 hours.¹⁶

Of the 42,440 hours spent annually to comply with the review and recordkeeping requirements of rule 17e-1, the Commission estimates that:

- 60 percent (25,464 hours) are spent by senior accountants, at an estimated hourly wage of \$193,¹⁷ for a total of approximately \$4,914,552 per year;¹⁸

overhead, yielding an effective hourly rate of \$379. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2012.

¹⁵ 1,768 funds x 0.6 = 1,061 funds.

¹⁶ 1,061 funds x 40 hours per fund = 42,440 hours.

¹⁷ The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figures are also based on published rates for senior accountants and in-house 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 effective hourly rates of \$193 and \$379, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2012.

¹⁸ 25,464 hours x \$193 per hour = \$4,914,552.

- 30 percent (12,732 hours) are spent by in-house attorneys at an estimated hourly wage of \$379, for a total of approximately \$4,825,428 per year;¹⁹ and
- 10 percent (4,244 hours) are spent by the funds' board of directors at an hourly cost of \$4,500, for a total of approximately \$19,098,000 per year.²⁰

Based on these estimated wage rates, the total cost to the industry of the hour burden for complying with the review and recordkeeping requirements of rule 17e-1 is approximately \$28,837,980.²¹ Accordingly, annual burden of the rule's paperwork requirements is 43,021 hours,²² at an estimated cost of \$29,058,179.²³

13. Estimate of Total Annual Cost Burden

There is no annual cost burden associated with complying with the information collection requirements in rule 17e-1. The cost burden does not include the cost of the hour burden discussed in Item 12 above.

14. Estimate of Cost to the Federal Government

The rule does not require anything to be filed with the Commission. Commission staff may, in the course of routine fund inspections, monitor compliance with the rule.

15. Explanation of Changes in Burden

¹⁹ 12,732 hours x \$379 per hour = \$4,825,428.

²⁰ 4,244 hours x \$4,500 per hour = \$19,098,000. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

²¹ \$4,914,552 + \$4,825,428 + \$19,098,000 = \$28,837,980.

²² 581 hours + 42,440 hours = 43,021 hours.

²³ \$220,199 + \$28,837,980 = \$29,058,179.

The estimated hourly burden associated with rule 17e-1 has decreased from 68,688 hours to 43,021 hours (a decrease of 25,667 hours). The decrease is due to a decrease in the number of funds estimated to use an affiliated broker and a decrease in the estimated average annual hourly burden per fund, partially offset by an increase in the estimated number of funds entering into a subadvisory agreement each year.

16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

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

The Commission is not seeking an exception to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.