

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 18f-3

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 18(f)(1) of the Investment Company Act of 1940 (the “Act”)¹ generally prohibits registered open-end management investment companies (“funds”) from issuing any senior security.² Rule 18f-3 under the Act 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.³ 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”).⁴ 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.

2. Purpose and Use of the Information Collection

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.

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-18(f)(1).

³ 17 CFR 270.18f-3.

⁴ 17 CFR 270.18f-3(d).

3. Consideration Given to Information Technology

The Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets.

Rule 18f-3 does not require a multiple class fund to file its rule 18f-3 plan with the Commission. The fund, however, is required to file the plan as an exhibit to its registration statement.⁵ Absent a hardship exemption, a fund transmits its registration statement and exhibits electronically to the Commission via EDGAR.⁶

4. 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.

5. Effect on Small Entities

The information collection requirements of rule 18f-3 do not distinguish between small entities and other entities. To the extent that smaller funds rely on rule 18f-3, their burden to prepare and approve an 18f-3 plan may be greater than for larger funds due to economies of scale.

The Commission considered special requirements for small entities. The Commission believes, however, that imposing different requirements on smaller fund companies would not be consistent with investor protection. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize reporting or recordkeeping requirements affecting small businesses.

6. Consequences of Not Conducting 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

⁵ Item 28(n) of Form N-1A [17 CFR 274.11A] (description of form).

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

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)

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

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 fund 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 the paperwork burdens confronting the industry. The Commission requested public comment on the collection of information requirements of rule 18f-3 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.

9. Payment or Gift

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. The information collection does not include personally identifiable information.

12. Burden of Information Collection

The following estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act of 1995⁷ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with the information collection requirements of rule 18f-3 is necessary

⁷ 44 U.S.C. 3501 *et seq.*

to obtain the benefit of the rule's exemption. Responses to the collection of information requirements will not be kept confidential.

The burden hour estimate for complying with the information collection requirements of rule 18f-3 is based on consultations with industry representatives and on the Commission's experience. The number of burden hours may vary depending on, among other things, the complexity of the multiple-class arrangements, the number of funds that use similar rule 18f-3 plans, and whether preparation of the 18f-3 plan is performed by fund staff or outside counsel. The number of funds used to estimate the burden hours is an estimate based on the Commission's statistics.

Based on an analysis of fund filings, the Commission estimates that there are approximately 5,831 multiple class funds offered by 969 registrants. The Commission estimates that each of the 969 registrants will make an average of 0.5 responses annually to prepare and approve a written 18f-3 plan.⁸ The Commission estimates each response will take 6 hours, requiring a total of 3 hours per registrant per year.⁹ Thus the total annual hour burden associated with these requirements of the rule is approximately 2,907 hours.¹⁰ Of the 2,907 hours spent annually to comply with the requirements of rule 18f-3, the Commission estimates that:

- Two thirds (1,938 hours) are spent by in-house attorneys to prepare the plan, at an estimated hourly wage of \$380,¹¹ for a total of approximately \$736,440 per year,¹² and

⁸ The Commission estimates 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 484.5 of all 969 registrants prepare and approve a plan each year).

⁹ 0.5 responses per registrant × 6 hours per response = 3 hours per registrant.

¹⁰ 3 hours per registrant per year × 969 registrants = 2,907 hours per year.

¹¹ 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 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 overhead, yielding an effective hourly rate of \$380. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

¹² 1,938 hours × \$380 per hour = \$736,440.

- One third (969 hours) are spent by the funds' board of directors to approve the plan at an hourly cost of \$4,500, for a total of approximately \$4,360,500 per year.¹³

Based on these estimated wage rates, the total cost to the industry of this hour burden is approximately \$5,096,940.¹⁴

13. Costs to Respondents

Cost burden is the cost of services purchased to comply with rule 18f-3, such as for the services of computer programmers or outside legal counsel. The cost burden does not include the cost of the hour burden discussed in Item 12 above. Estimates are based on the Commission's experience. The Commission currently attributes no external cost burden to rule 18f-3.

14. Costs to Federal Government

The rule imposes no costs associated with filing reports or any other costs to the Federal government.

15. Changes in Burden

The estimated hourly burden associated with rule 18f-3 has decreased from 4,080 hours to 2,907 hours (a decrease of 1,173 hours). The decrease is due to a decrease in the estimated number of registrants offering multiple class funds and a decrease in the estimated average hourly burden per registrant.

16. Information Collection Planned for Statistical Purposes

The results of any information collection will not be published.

17. Approval to Omit OMB Expiration Date

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

¹³ 969 hours × \$4,500 per hour = \$4,360,500. 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.

¹⁴ \$736,440 + \$4,360,500 = \$5,096,940.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

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.