

## **SUPPORTING STATEMENT**

### **For the Paperwork Reduction Act Information Collection Submission for Rule 22c-1**

#### **A. JUSTIFICATION**

##### **1. Necessity for the Information Collection**

Proposed amendments to rule 22c-1 (17 CFR 270.22c-1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the “Investment Company Act” or “Act”) would permit a registered open-end investment company (but not a registered investment company that is regulated as a money market fund, and not including an exchange-traded fund) to use “swing pricing,” the process of adjusting a fund’s<sup>1</sup> current net asset value per share (“NAV”) to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase and redemption activity, under certain circumstances. The proposed amendments to rule 22c-1 are intended to provide funds with an additional tool to mitigate potential dilution and to manage fund liquidity.

In order to use swing pricing, a fund would have to establish and implement swing pricing policies and procedures in accordance with the requirements of proposed rule 22c-1(a)(3). Proposed rule 22c-1(a)(3) would require a fund’s swing pricing policies and procedures to incorporate certain specified elements, and also would require a fund’s board of directors (including a majority of directors who are not interested persons of the fund) to approve the policies and procedures, including any material changes thereto. Finally, proposed rule

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<sup>1</sup> For purposes of this Supporting Statement, the term “fund” denotes a fund as defined in proposed rule 22c-1(a)(3), that is, “a registered open-end management investment company (but not a registered open-end management investment company that is regulated as a money market fund under § 270.2a-7 or an exchange traded fund as defined in [proposed rule 22c-1(a)(3)(v)(A)]).”

22c-1(a)(3) would require a fund to maintain a written copy of swing pricing policies and procedures adopted by the fund that are in effect, or at any time within the past six years were in effect, in an easily accessible place. The requirements for a fund that chooses to use swing pricing to (i) adopt swing pricing policies and procedures, (ii) obtain board approval of the swing pricing policies and procedures, and (iii) maintain a written copy of the swing pricing policies and procedures are “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>2</sup>

## **2. Purpose and Use of the Information Collection**

The information collection requirements of proposed rule 22c-1(a)(3) are integral to the swing pricing framework created by the proposed rule. Thus, the information collections are necessary to help further the proposed rule’s goal of promoting investor protection by providing funds with a tool to mitigate potential dilution and to manage fund liquidity. The information collections also would assist the Commission’s examination staff to ascertain whether a fund that has adopted swing pricing policies and procedures has done so in compliance with the requirements of proposed rule 22c-1(a)(3).

## **3. Consideration Given to Information Technology**

Proposed rule 22c-1(a)(3) does not require the reporting of any information or the filing of any documents with the Commission. The Electronic Signatures in Global and National Commerce Act<sup>3</sup> and the conforming amendments to rules under the Investment Company Act and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) permit funds and their financial intermediaries to maintain records electronically.

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<sup>2</sup> 44 U.S.C. 3501-3520.

<sup>3</sup> P.L. 106-229, 114 Stat. 464 (June 30, 2000).

#### **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. The information required by proposed rule 22c-1(a)(3) is not duplicated elsewhere.

#### **5. Effect on Small Entities**

The information collection requirements of proposed rule 22c-1(a)(3) do not distinguish between small entities and other funds. As discussed above, the information collection requirements of proposed rule 22c-1(a)(3) are integral to the swing pricing framework created by the proposed rule, and thus they are necessary to help further the investor protection goals of the proposed rule. The Commission therefore believes that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of proposed rule 22c-1(a)(3). Because the adoption of swing pricing policies and procedures would be permitted, but not required, under the proposed rule, a fund that is a small entity would not need to incur the costs of compliance with the proposed rule if the fund (and the fund's board) were to determine that the advantages of swing pricing would not outweigh the associated disadvantages, including costs associated with the information collection requirements.

#### **6. Consequences of Less Frequent Collection**

Proposed rule 22c-1(a)(3) requires a fund that chooses to use swing pricing to adopt swing pricing policies and procedures that are approved by the fund's board of directors and to maintain a written copy of these policies and procedures. The adoption and maintenance of written policies and procedures are integral to the swing pricing framework created by the proposed rule. Thus, not requiring these collections of information would be incompatible with the investor protection goals of proposed rule 22c-1(a)(3).

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

Proposed rule 22c-1(a)(3) would require funds to retain certain written records for more than three years. Specifically, the proposed rule would require a fund to maintain a written copy of swing pricing policies and procedures adopted by the fund that are in effect, or at any time within the past six years were in effect, in an easily accessible place. The long-term retention of these records contributes to the effectiveness of the Commission's examination and inspection program. Commission staff periodically inspects the operations of funds to ensure compliance with rules and regulations under the Act; however, each fund may be inspected only at intervals of several years due to limits on our resources. For this reason, we often need information relating to events or transactions that occurred years ago.

We note that the Commission has also proposed amendments to current rule 31a-2(a)(2), which requires a fund to keep records evidencing and supporting each computation of the fund's NAV, to reflect the NAV adjustments based on a fund's swing pricing policies and procedures. The six-year retention period in proposed rule 22c-1(a)(3) is consistent with the retention period in current rule 31a-2 (as well as rule 31a-2 as proposed to be amended). Consistency in these retention periods is appropriate in order to permit a fund or Commission staff to review historical instances of NAV adjustments effected pursuant to the fund's swing pricing policies and procedures, in light of the policies and procedures that were actually in place at the time the NAV adjustments occurred.

## **8. Consultation Outside the Agency**

Before adopting proposed rule 22c-1(a)(3), the Commission will receive and evaluate public comments on the proposal and its collection of information requirements. Moreover, 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 information exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry.

**9. Payment or Gift**

Not applicable.

**10. Assurance of Confidentiality**

Responses provided to the Commission in connection with staff examinations or investigations would be kept confidential subject to the provisions of applicable law. If information collected pursuant to proposed rule 22c-1(a)(3) is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

**11. Sensitive Questions**

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

**12. Burden of Information Collection**

As discussed above, funds would be permitted but not required to use swing pricing, provided that, in order to use swing pricing, a fund must adopt swing pricing policies and procedures in accordance with the requirements of proposed rule 22c-1(a)(3). We estimate that 167 fund complexes include funds that would adopt swing pricing policies and procedures pursuant to proposed rule 22c-1(a)(3).<sup>4</sup>

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<sup>4</sup> In developing the estimate that 167 fund complexes would adopt swing pricing policies and procedures, Commission staff assumed that the percentage of fund complexes that includes high-yield bond funds, world bond funds (including emerging market debt funds), multi-sector

### A. Documentation and Approval of Swing Pricing Policies and Procedures

We estimate that each fund complex that includes funds that use swing pricing would incur a one-time average burden of 24 hours to document swing pricing policies and procedures. Proposed 22c-1(a)(3) would require fund boards initially to approve the swing pricing policies and procedures and any material changes to them, and we estimate a one-time burden of 5 hours per fund complex associated with the fund board's approval of swing pricing policies and procedures. Accordingly, we estimate that the total burden associated with the preparation and approval of swing pricing policies and procedures would be 4,843 hours.<sup>5</sup> We estimate that it would cost a fund complex \$21,710 to document and initially approve these policies and procedures, for a total cost of \$3,625,570.<sup>6</sup>

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bond funds, state municipal funds, alternative strategy funds, and emerging market equity funds, as a fraction of all fund complexes, is the same as the percentage of all mutual funds (excluding money market funds) that these strategies represent. The actual number of fund complexes that includes these selected strategies could be higher or lower than the number calculated using this assumption. 241 high yield bond mutual funds + 347 world bond mutual funds (estimate includes emerging market bond funds) + 139 multi-sector bond mutual funds + 322 state municipal mutual funds + 376 alternative strategy funds that are equity funds (alternative strategy funds that are bond funds are included in our estimates of the number of bond mutual funds) + 469 emerging market equity mutual funds = 1,894 funds with strategies that staff assumed would be relatively more likely to adopt swing pricing policies and procedures. 1,894 funds with selected strategies ÷ 7,395 mutual funds (excluding money market funds) = approximately 25.6%. 0.256 x 867 fund complexes = approximately 222 fund complexes. Assuming that 75% of these fund complexes would actually adopt swing pricing policies and procedures, 0.75 x 222 fund complexes = approximately 167 fund complexes. These estimates are based on figures included in the Investment Company Institute's 2015 Investment Company Fact Book ("2015 ICI Fact Book"). See Investment Company Institute, 2015 Investment Company Act Book (2015), available at [http://www.ici.org/pdf/2015\\_factbook.pdf](http://www.ici.org/pdf/2015_factbook.pdf).

<sup>5</sup> This estimate is based on the following calculation: (24 +5) hours x 167 fund complexes = 4,843 hours.

<sup>6</sup> These estimates are based on the following calculations: 12 hours x \$198 (hourly rate for a senior accountant) = \$2,376; 12 hours x \$455.5 (blended hourly rate for assistant general counsel (\$426) and chief compliance officer (\$485)) = \$5,466; 3 hours x \$4,400 (hourly rate for a board of 8 directors) = \$13,200; 2 hours (for a fund attorney's time to prepare materials for the board's determinations) x \$334 (hourly rate for a compliance attorney) = \$668; (\$2,376 + \$5,466 + \$13,200 + \$668) = \$21,710; \$21,710 x 167 fund complexes = \$3,625,570.

### B. Recordkeeping Requirements Associated with Proposed Rule 22c-1(a)(3)

We estimate that each fund complex that includes funds that use swing pricing would incur an annual burden of 3 hours to retain the records required under proposed rule 22c-1(a)(3). We estimate a time cost per fund complex of \$216 associated with this annual recordkeeping burden.<sup>7</sup> We estimate the recordkeeping requirements of proposed rule 22c-1(a)(3) would result in a total aggregate burden of 501 hours per year, at a total aggregate time cost of \$36,072 per year.<sup>8</sup>

### C. Estimated Total Burden

Amortized over a three-year period, the hour burdens and time costs associated with proposed rule 22c-1(a)(3) (which include the burdens and time costs associated with the requirements that funds adopt swing pricing policies and procedures, obtain board approval of the policies and procedures, and retain certain records) would result in a aggregate annual burden of 2,115 hours and aggregate annual time costs of \$1,244,595.<sup>9</sup>

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The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Commission staff previously estimated in 2009 that the average cost of board of director time was \$4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, Commission staff estimates that the current average cost of board of director time is approximately \$4,400.

<sup>7</sup> This estimate is based on the following calculations: 1.5 hours x \$57 (hourly rate for a general clerk) = \$85.5; 1.5 hours x \$87 (hour rate for a senior computer operator) = \$130.5. \$85.5 + \$130.5 = \$216.

<sup>8</sup> These estimates are based on the following calculation: 3 hours x 167 fund complexes = 501 hours; 167 fund complexes x \$216 = \$36,072.

<sup>9</sup> These estimates are based on the following calculations: (4,843 hours (year 1) + (3 x 501 hours) (years 1, 2 and 3)) ÷ 3 = 2,115 hours; (\$3,625,570 (year 1) + (3 x \$36,072) (years 1, 2 and 3)) ÷ 3 = \$1,244,595.

**13. Cost to Respondents**

We estimate that proposed rule 22c-1(a)(3) does not impose any burdens other than those discussed in Item 12 above. Although proposed rule 22c-1(a)(3) requires funds to maintain records for six years, these records may be maintained electronically and, even if maintained in hard copy, are unlikely to be voluminous. The staff has not estimated a capital cost in connection with the recordkeeping requirements because funds and their advisers would likely use existing recordkeeping systems to maintain the required records.

**14. Cost to the Federal Government**

The rule does not impose any additional costs on the federal government.

**15. Changes in Burden**

Not applicable. This is the first request for approval of the collection of information for this rule.

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to Omit OMB Expiration Date**

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

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

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

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

Not applicable. The collection of information will not employ statistical methods.