

**SUPPORTING STATEMENT**  
**FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION**  
**SUBMISSION FOR**  
**PROPOSED RULE 22e-4**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 22(e) of the Investment Company Act of 1940 (“Investment Company Act”)<sup>1</sup> provides that no registered investment company shall suspend the right of redemption or postpone the date of payment of redemption proceeds for more than seven days after tender of the security absent specified unusual circumstances.<sup>2</sup> Rule 22e-1 provides an exemption from section 22(e) during the annuity payment period of variable annuity contracts participating in certain registered separate accounts.<sup>3</sup> Rule 22e-2 provides that an investment company shall not be deemed to suspend the right of redemption if the fund prices a redemption request by computing the fund’s net asset value (“NAV”) in accordance with rule 22c-1 under the Investment Company Act (the “forward pricing rule”).<sup>4</sup> Furthermore, rule 22e-3 provides an exemption from the requirements of section 22(e) for a money market fund to suspend redemptions and postpone payment of redemption proceeds in an orderly liquidation of the fund if, subject to requirements outlined in the rule, the fund’s board makes certain findings.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>2</sup> *See* 15 U.S.C. 80a-22(e).

<sup>3</sup> *See* 17 CFR 270.22e-1.

<sup>4</sup> *See* 17 CFR 270.22e-2. The forward pricing rule requires funds, their principal underwriters, dealers in fund shares, and other persons designated in a fund’s prospectus, to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to purchase or redeem.

<sup>5</sup> *See* 17 CFR 270.22e-3(a).

On September 22, 2015, the Commission issued a release proposing new rule 22e-4, which would require registered open-end management investment companies, including open-end exchange traded funds but not including money market funds, to establish a written liquidity risk management program that is reasonably designed to assess and manage a fund's liquidity risk.<sup>6</sup> Liquidity risk, in general, would be defined as the risk that a fund could not meet requests to redeem shares issued by the fund without materially affecting the fund's net asset value.<sup>7</sup> A fund's liquidity risk management program would be required to include the following elements: (i) classification of the liquidity of a fund's portfolio positions (which would be reported on proposed Form N-PORT); (ii) assessment and periodic review of a fund's liquidity risk; and (iii) management of the fund's liquidity risk, including the investment of a set minimum portion of net assets in assets that the fund believes are convertible to cash within three business days at a price that does not materially affect the value of that asset immediately prior to sale (the fund's "three-day liquid asset minimum"), limiting investments in certain less liquid assets ("15% Standard Assets"), and the establishment of policies and procedures regarding redemptions in kind, to the extent that the fund engages in or reserves the right to engage in redemptions in kind.<sup>8</sup>

Proposed rule 22e-4 also includes board oversight provisions related to the liquidity risk management program requirement. The rule would require a fund's board to approve the fund's liquidity risk management program (including the fund's three day liquid asset minimum), any material changes to the program, and the fund's designation

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<sup>6</sup> Investment Company Act Release No. 31835 (Sept. 22, 2015) (the "Proposing Release").

<sup>7</sup> Proposed rule 22e-4(a)(7).

<sup>8</sup> Proposed rule 22e-4(b)(1), (2).

of the fund's investment adviser or officers responsible for administering the fund's liquidity risk management program.<sup>9</sup>

In addition, a fund would have to maintain a written copy of the policies and procedures adopted as part of its liquidity risk management program, copies of any materials provided to its board in connection with the board's assessments and approvals of the program, and copies of written reports provided to the board that review the adequacy of the fund's program.<sup>10</sup> A fund also would have to keep a written record of how its three-day liquid asset minimum, and any adjustments thereto, were determined.<sup>11</sup>

Compliance with proposed rule 22e-4 would be mandatory for open-end management investment companies (other than money market funds). Information regarding the fund's three-day liquid asset minimum would be publicly reported on proposed Form N-PORT.

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

Certain of the provisions of the proposed rule contain "collection of information" requirements within the meaning on the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act"),<sup>12</sup> and the Commission is submitting the collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The proposed rule is intended to improve investor protection by decreasing the likelihood that a fund will be unable to meet its redemption obligations, would meet such obligations only by materially affecting the fund's NAV, or

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<sup>9</sup> Proposed rule 22e-4(b)(3).

<sup>10</sup> Proposed rule 22e-4(c)(2).

<sup>11</sup> Proposed rule 22e-4(c)(3).

<sup>12</sup> 44 U.S.C. 3501 *et seq.*

would meet such obligations through methods that would have other adverse impacts on non-redeeming investors (e.g., increased risk exposure and decreased liquidity).

The information collection requirements of proposed rule 22e-4 are designed to ensure that funds maintain comprehensive, written liquidity risk management programs that promote compliance with the federal securities laws and protect investors. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' liquidity risk management programs and identifying weaknesses in a fund's liquidity risk management if violations occur or are uncorrected.

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

Proposed rule 22e-4 requires that each fund maintain written copies of the policies and procedures adopted as part of its liquidity risk management program, copies of any materials provided to its board in connection with the board's assessments and approvals of the program, copies of written reports provided to the board that review the adequacy of the fund's program, and written records of how the fund determined its three-day liquid asset minimum (and any adjustments thereto). The Electronic Signatures in Global and National Commerce Act<sup>13</sup> and the conforming amendments to rules under the Investment Company Act permit funds to maintain records electronically.

### **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. Proposed rule 22e-4 imposes a requirement that funds have in place

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<sup>13</sup> P.L. 106-229, 114 Stat. 464 (June 30, 2000).

written liquidity risk management policies and procedures. The information required by proposed rule 22e-4 is not generally duplicated elsewhere.

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

The information collection requirements of proposed rule 22e-4 do not distinguish between small entities and other funds. The burden of the conditions on smaller funds may be proportionally greater than for larger funds. 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 conditions and could potentially jeopardize the interests of investors in small funds. 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.

#### **6. Consequences of Not Conducting Collection**

Proposed rule 22e-4 requires funds to have and maintain a written liquidity risk management program. Under the rule, a fund's investment adviser or officer that administers the liquidity risk management program must provide a written report to the fund's board at least annually that reviews the adequacy of the fund's program, including the fund's three-day liquid asset minimum, and the effectiveness of its implementation.

Not collecting information or collecting such information less frequently would be incompatible with the objectives of rule 22e-4. The reporting of information and the establishment of written policies and procedures and maintaining written reports are integral parts to detecting and correcting any gaps in a fund's liquidity risk management programs before irrevocable or widespread harm is inflicted upon investors. Not

requiring the collection of information increases the likelihood that such harm could go unchecked.

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

Proposed rule 22e-4 would require a fund to maintain for at least five years: (i) a written copy of its liquidity risk management policies and procedures, (ii) copies of any materials provided to the fund's board of directors in connection with the board's assessment and approval of the fund's program (the first two years in an easily accessible place), and (iii) a written record of how the fund's three-day liquid asset minimum, and any adjustments thereto, were determined. Although this five-year period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2), the staff believes that this is warranted because the rule contributes to the effectiveness of the Commission's examination and inspection program. Because the period between examinations may be as long as five years, it is important that the Commission have access to records that cover the entire period between examinations.

The five-year retention period in proposed rule 22e-4 is consistent with that in rule 38a-1(d) under the Investment Company Act. We believe that consistency in these retention periods is appropriate because funds currently have program-related recordkeeping procedures in place incorporating a five-year retention period. Furthermore, we believe that a five-year retention period would lessen the compliance burden of proposed rule 22e-4 slightly, compared to choosing a different retention period, such as the six-year recordkeeping retention period under rule 31a-2 of the Investment Company Act.

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

Before adopting proposed rule 22e-4, 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**

No payment or gift to respondents was provided.

## **10. Assurance of Confidentiality**

Information regarding a fund's three-day liquid asset minimum would be confidential until publicly reported on proposed Form N-PORT. Other information 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 22e-4 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 PII collected/Not applicable.

## **12. Estimate of Hour Burden**

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or

even representative survey or study of the cost of Commission rules and forms.

Compliance with proposed rule 22e-4 would be mandatory.

A. Preparation of Written Liquidity Risk Management Program

We believe that most funds regularly monitor the liquidity of their portfolios as part of the portfolio management function, but they may not have written policies and procedures regarding liquidity management. While proposed rule 22e-4 would require each fund to maintain a written liquidity risk management program, most funds are located within a fund complex. The experience of the Commission's examination and oversight staff suggests that each fund in a complex is able to draw extensively from the fund complex's "master" compliance program to assemble appropriate compliance policies and procedures.

We estimate that a fund complex would incur a one-time average burden of 40 hours associated with documenting the liquidity risk management programs adopted by each fund within the complex. Proposed rule 22e-4 requires fund boards to approve the liquidity risk management program and any material changes to the program (including the three-day liquid asset minimum), and we estimate a one-time burden of nine hours per fund complex associated with fund boards' review and approval of the funds' liquidity risk management programs and preparation of board materials. Amortized over a 3 year period, this would be an annual burden per fund complex of about 16 hours. Accordingly, we estimate that the total burden for initial documentation and review of funds' written liquidity risk management program would be 42,483 hours.<sup>14</sup> We also estimate that it would cost a fund complex approximately \$38,466 to document, review

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<sup>14</sup> This estimate is based on the following calculation: (40 + 9) hours x 867 fund complexes = 42,483 hours.

and initially approve these policies and procedures, for a total cost of approximately \$33,350,022.<sup>15</sup>

#### B. Reporting Regarding the Three-Day Liquid Asset Minimum

Under proposed rule 22e-4(b)(2)(iv), each fund would be required as part of its liquidity risk management program to determine and periodically review its three-day liquid asset minimum. The fund's investment adviser or officer that administers the liquidity risk management program must provide a written report to the fund's board at least annually that reviews the adequacy of the fund's liquidity risk management program, including the fund's three-day liquid asset minimum, and the effectiveness of its implementation.

We estimate that, for each fund complex, compliance with the reporting requirement would entail: (i) five hours of portfolio management time, (ii) five hours of compliance time, (iii) five hours of professional legal time, and (iv) 2.5 hours of support staff time, requiring an additional 17.5 burden hours at a time cost of approximately \$5,193 per fund complex to draft the required report to the board.<sup>16</sup> We estimate that the

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<sup>15</sup> These estimates are based on the following calculations: 20 hours x \$301 (hourly rate for a senior portfolio manager) = \$6,020; 20 hours x \$455.5 (blended hourly rate for assistant general counsel (\$426) and chief compliance officer (\$485)) = \$9,110; 5 hours x \$4,400 (hourly rate for a board of 8 directors) = \$22,000; 4 hours (for a fund attorney's time to prepare materials for the board's determinations) x \$334 (hourly rate for a compliance attorney) = \$1,336. \$6,020 + \$9,110 + \$22,000 + \$1,336 = \$38,466; \$38,466 x 867 fund complexes = \$33,350,022. 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. The 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, the staff estimates that the current average cost of board of director time is approximately \$4,400.

<sup>16</sup> This estimate is based on the following calculation: 5 hours x \$301 (hourly rate for a senior portfolio manager) = \$1,505; 5 hours x \$283 (hourly rate for compliance manager) = \$1,415; 5 hours x \$426 (hourly rate for assistant general counsel) = \$2,130; and 2.5 hours x \$57 (hourly rate for general clerk) = \$143. \$1,505 + \$1,415 + \$2,130 + \$143 = \$5,193. 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

total burden for preparation of the board report would be 15,173 hours, at an aggregate cost of \$4,502,331.<sup>17</sup>

### C. Recordkeeping

Proposed rule 22e-4(c) would require a fund to maintain a written copy of policies and procedures adopted pursuant to its liquidity risk management program for five years in an easily accessible place. The proposed rule also would require a fund to maintain copies of materials provided to the board, as well as a written record of how the three-day liquid asset minimum and any adjustments to the minimum were determined, for five years, the first two years in an easily accessible place. We estimate that the burden would be five hours per fund complex to retain these records, with 2.5 hours spent by a general clerk and 2.5 hours spent by a senior computer operator. We estimate a time cost per fund complex of \$361.<sup>18</sup> We estimate that the total burden for recordkeeping related to the liquidity risk management program would be 4,335 hours, at an aggregate cost of \$312,987.<sup>19</sup>

### D. Estimated Total Burden

Amortized over a three-year period, the hour burdens and time costs associated with proposed rule 22e-4, including the burden associated with (a) funds' initial

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overhead. The hourly wage used for the general clerk is from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

Because each fund within a fund complex would be required to determine its own three-day liquid asset minimum, this estimate assumes that the report at issue would incorporate an assessment of the three-day liquid asset minimum for each fund within the fund complex.

<sup>17</sup> These estimates are based on the following calculations: 867 fund complexes x 17.5 hours = 15,173 hours; and \$5,193 x 867 fund complexes = \$4,502,331.

<sup>18</sup> This estimate is based on the following calculations: 2.5 hours x \$57 (hourly rate for a general clerk) = \$143; 2.5 hours x \$87 (hour rate for a senior computer operator) = \$218. \$143 + \$218 = \$361.

<sup>19</sup> This estimate is based on the following calculations: 867 fund complexes x 5 hours = 4,335 hours. 867 fund complexes x \$361 = \$312,987.

documentation and review of the required written liquidity risk management program, (b) reporting to a fund's board regarding the fund's three-day liquid asset minimum, and (c) recordkeeping requirements, would result in an average aggregate annual burden of 28,611 hours and average aggregate time costs of \$14,431,215.<sup>20</sup>

### **13. Cost to Respondents**

The staff estimates that rule 22e-4 does not impose any material cost burdens on funds, apart from the cost of the burden hours discussed above. Although rule 22e-4 requires funds to maintain records for five 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. Costs to Federal Government**

Proposed rule 22e-4 does not impose a cost to the federal government. Commission staff may, however, review records produced pursuant to the rule in order to assist the Commission in carrying out its examination and oversight program.

### **15. Changes in Burden**

This is the first request for approval of the collection of information for this rule.

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

Not applicable.

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<sup>20</sup> These estimates are based on the following calculations: 42,483 hours (year 1) + (2 x 15,173 hours) (years 2 and 3) + (3 x 4,335 hours) (years 1, 2 and 3) ÷ 3 = 28,611 hours; \$33,350,022 (year 1) + (2 x \$4,502,331) (years 2 and 3) + (3 x \$312,987) (years 1, 2 and 3) ÷ 3 = \$14,431,215.

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

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

**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.