

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 22c-1

A. JUSTIFICATION

1. Necessity for the Information Collection

We are adopting, largely as 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”) that will enable a fund¹ choose to use “swing pricing” as a tool to mitigate shareholder dilution. This will be a new collection of information under the PRA. We believe that rule 22c-1 will promote investor protection by providing funds with an additional tool to mitigate the potentially dilutive effects of shareholder purchase or redemption activity and provide a set of operational standards that will allow funds to gain comfort using swing pricing as a new means of mitigating potential dilution.

In order to use swing pricing under rule 22c-1, as amended, a fund is required to establish and implement swing pricing policies and procedures that meet certain requirements. The policies and procedures must specify the process for determining the level(s) of net purchases into or net redemptions from the fund (“swing thresholds(s)”) that would trigger share price adjustment for transacting shareholders, as well as for determining the figure(s) used for such share price adjustment (“swing factor(s)”), including the establishment of an upper limit on the swing factor(s) used (which may not exceed two percent of net asset value (“NAV”) per share). The amendments require a fund’s board of directors to approve the fund’s swing pricing policies and procedures, as

¹ For purposes of this Supporting Statement, the term “fund” denotes a fund as defined in 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 rule 22c-1(a)(3)(v)(A)).”

well as the fund's swing threshold and swing factor upper limit (and any changes to the swing threshold or swing factor upper limit). The fund's board is also required to review, no less frequently than annually, a written report prepared by the persons responsible for administering swing pricing that describes: (i) its review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution; (ii) any material changes to the fund's swing pricing policies and procedures since the date of the last report; and (iii) its review and assessment of the fund's swing threshold(s), swing factor(s), and swing factor upper limit considering the requirements of the rule, including the information and data supporting these determinations. A fund is required to maintain the fund's swing pricing policies and procedures and a written copy of the periodic report provided to the board.

The respondents to amended rule 22c-1 will be open-end management investment companies (other than money market funds or exchange-traded funds) that engage in swing pricing. Compliance with rule 22c-1(a)(3) will be mandatory for any fund that chooses to use swing pricing to adjust its NAV in reliance on the amendments. Finally, rule 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 that funds adopt policies and procedures, obtain board approval and periodic review, provide a written report to the board, and retain certain records related to swing pricing are "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").²

² 44 U.S.C. 3501-3520.

2. Purpose and Use of the Information Collection

The information collection requirements of rule 22c-1(a)(3) are integral to the swing pricing framework created by the rule. Thus, the information collections are necessary to help further the 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 rule 22c-1(a)(3).

3. Consideration Given to Information Technology

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 Act³ 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.

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 rule 22c-1(a)(3) is not duplicated elsewhere.

5. Effect on Small Entities

The information collection requirements of rule 22c-1(a)(3) do not distinguish between small entities and other funds. As discussed above, the information collection requirements of rule 22c-1(a)(3) are integral to the swing pricing framework created by the rule, and thus they

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

are necessary to help further the investor protection goals of the rule. The Commission therefore believes that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of rule 22c-1(a)(3). Because the adoption of swing pricing policies and procedures would be permitted, but not required, under the rule a fund that is a small entity is not required to incur the costs of compliance.

6. Consequences of Not Conducting Collection

Rule 22c-1(a)(3) requires a fund that chooses to use swing pricing to adopt swing pricing policies and procedures that include certain elements and are approved by the fund's board of directors, and to maintain certain records, including written copies of the fund's swing pricing policies and procedures, the periodic report provided to the board,⁴ and records of support for each computation of an adjustment to the fund's NAV based on the fund's swing pricing policies and procedures. The adoption and maintenance of written policies and procedures are integral to the swing pricing framework created by the rule. Furthermore, the board reporting elements of the rule are important investor protection controls. Thus, not requiring these collections of information would be incompatible with the investor protection goals of rule 22c-1(a)(3).

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

Rule 22c-1(a)(3) would require funds to retain certain written records for more than three years. Specifically, the 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.

⁴ Rule 22c-1(a)(3)(iii).

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 adopted 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 rule 22c-1(a)(3) is consistent with the retention period in current rule 31a-2 (as well as rule 31a-2 as 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

The Commission requested public comment on the collection requirements of rule 22c-1(a)(3) before it submitted this request for revision and approval to the Office of Management and Budget.⁵ The Commission evaluated all public comments it received regarding the collection requirements associated with rule 22c-1(a)(3). 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.

⁵ See Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act Release No. 31835 (Sept. 22, 2015) [80 FR 62273 (Oct. 15, 2015)] ("Proposing Release").

The Commission has modified the estimated increase in burden hours associated with a fund documenting its swing pricing policies and procedures in consideration of commenters' concerns that such burdens were underestimated in the Proposing Release,⁶ as well as modifications made to the proposal and updates to data figures that were utilized in the Proposing Release. We estimate that 84 fund complexes, rather than 167 fund complexes (half as many fund complexes as estimated in the proposal), include funds that will adopt swing pricing policies and procedures pursuant to the rule.⁷ While one commenter suggested that the burden to comply with the amendments to rule 22c-1 would be four or five times more costly than in the proposal,⁸ we believe that with respect to the PRA analysis, the estimated burdens for documenting swing pricing procedures will not be as high as the commenter's estimate of the costs associated with the entire implementation of swing pricing policies and procedures. Based on our review of the adopted requirements, we estimate that each fund complex will incur a one-time average burden of 48 hours, rather than 24 hours, to document swing pricing policies and procedures. We further estimate that each fund complex will spend 2 hours, on average, preparing the required written report to the board. Since a fund board will approve the fund's

⁶ See Comment Letter of Dechert LLP (Jan. 13, 2016) ("Dechert Comment Letter"); Comment Letter of Eaton Vance Corp. (June 13, 2016) ("Eaton Vance Comment Letter"); Comment Letter of Investment Company Institute (Jan. 13, 2016) ("ICI Comment Letter"); Comment Letter of Independent Directors Council (Jan. 13, 2016) ("IDC Comment Letter"); Comment Letter of Invesco Ltd. (Jan. 13, 2016) ("Invesco Comment Letter"); Comment Letter of J.P. Morgan Asset Management (Jan. 13, 2016) ("J.P. Morgan Comment Letter"); Comment Letter of Charles Schwab Investment Management (Jan. 13, 2016) ("Charles Schwab Comment Letter"); Comment Letter of T. Rowe Price (Jan. 13, 2016) ("T. Rowe Comment Letter").

⁷ Commenters noted a variety of challenges associated with the immediate implementation of swing pricing. Accordingly, we have revised our estimated number of fund complexes that will implement swing pricing within the three-year period discussed below. Additionally, the two-year extended effective date means that no fund may implement swing pricing until the third year, which will likely further reduce the number of funds for purposes of this estimate.

⁸ See Charles Schwab Comment Letter (stating that the Commission based its estimated costs to establish and implement swing pricing policies and procedures in part on the costs associated with implementing the fees and gates provisions of the 2014 money market fund reform rule and that, in the commenter's experience, the implementation costs for the money market fund reform rule were severely understated).

swing pricing policies and procedures and review, no less frequently than annually, a written report that includes certain required elements, we estimate a one-time burden of 6 hours, rather than 5 hours per fund complex associated with the fund board's review and approval of swing pricing policies and procedures. We did not receive any comments on the estimated hour and cost burdens for recordkeeping requirements associated with rule 22c-1(a)(3).

9. Payment or Gift

No payment or gift to respondents was provided.

10. 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 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 involved.

12. Burden of Information Collection

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 rule 22c-1(a)(3) would only be mandatory for funds that chose to adopt swing pricing.

A. Documentation and Approval of Swing Pricing Policies and Procedures

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 rule 22c-1(a)(3). In the Proposing Release, we estimated that 167 fund complexes include funds that would adopt swing pricing policies and procedures pursuant to the rule. For purposes of the PRA analysis, we estimated that each fund complex would incur a one-time average burden of 24 hours to document swing pricing policies and procedures. Under the proposal, rule 22c-1 would have required fund boards initially to approve the swing pricing policies and procedures (including the swing threshold) and any material changes to them, and we estimated a one-time burden of five hours per fund complex associated with the fund board's review and approval of swing pricing policies and procedures. Amortized over a 3-year period, we estimated that this would be an annual burden per fund complex of about 10 hours. Accordingly, we estimated that the total burden associated with the preparation and approval of swing pricing policies and procedures by those fund complexes that we believed would use swing pricing would be 4,843 hours.⁹ We also estimated that it would cost a fund complex \$21,710 to document, review and initially approve these policies and procedures, for a total cost of \$3,625,570.¹⁰

As discussed above, many commenters expressed general concerns about the operational and technology costs associated with swing pricing and recommended that the Commission consider the substantial costs and technology challenges that need to be overcome to implement swing pricing. One commenter expressed the belief that the Commission significantly

⁹ This estimate was based on the following calculation: (24 +5) hours x 167 fund complexes = 4,843 hours.

¹⁰ These estimates were 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. The hourly wages used were 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. *See also infra* footnote 16 (discussing basis for estimated hourly rate for a board of directors).

underestimated the costs associated with developing and implementing the systems and procedures necessary to comply with rule 22c-1 swing pricing requirements and stated that its implementation costs for swing pricing would likely be four or five times more costly than the Commission's estimates in the proposal. We appreciate the information provided by the commenter and, in consideration of their comment, have extrapolated from this commenter's estimate increased cost estimates for the amendments to rule 22c-1 adopted today.

The Commission has modified the estimated increase in burden hours associated with a fund documenting its swing pricing policies and procedures in consideration of commenters' concerns that such burdens were underestimated,¹¹ as well as modifications made to the proposal and updates to data figures that were utilized in the Proposing Release. We estimate that 84 fund complexes, rather than 167 fund complexes (half as many fund complexes as estimated in the proposal), include funds that will adopt swing pricing policies and procedures pursuant to the rule.¹² While one commenter suggested that the burden to comply with the amendments to rule 22c-1 would be four or five times more costly than in the proposal,¹³ we believe that with respect to the PRA analysis, the estimated burdens for documenting swing pricing procedures will not be as high as the commenter's estimate of the costs associated with the entire implementation of swing pricing policies and procedures. Based on our review of the adopted requirements, we

¹¹ See Dechert Comment Letter; Eaton Vance Comment Letter; ICI Comment Letter I; IDC Comment Letter; Invesco Comment Letter; J.P. Morgan Comment Letter; Charles Schwab Comment Letter; T. Rowe Comment Letter.

¹² Commenters noted a variety of challenges associated with the immediate implementation of swing pricing. Accordingly, we have revised our estimated number of fund complexes that will implement swing pricing within the three-year period discussed below. Additionally, the two-year extended effective date means that no fund may implement swing pricing until the third year, which will likely further reduce the number of funds for purposes of this estimate.

¹³ See Charles Schwab Comment Letter (stating that the Commission based its estimated costs to establish and implement swing pricing policies and procedures in part on the costs associated with implementing the fees and gates provisions of the 2014 money market fund reform rule and that, in the commenter's experience, the implementation costs for the money market fund reform rule were severely understated).

estimate that each fund complex will incur a one-time average burden of 48 hours, rather than 24 hours, to document swing pricing policies and procedures. We further estimate that each fund complex will spend 2 hours, on average, preparing the required written report to the board. Since a fund board will approve the fund's swing pricing policies and procedures and review, no less frequently than annually, a written report that includes certain required elements, we estimate a one-time burden of 6 hours, rather than 5 hours per fund complex associated with the fund board's review and approval of swing pricing policies and procedures.

Amortized over a 3-year period, we estimate that this will be an annual burden per fund complex of about 18.67 hours, rather than 10 hours.¹⁴ Accordingly, we estimate that the total burden associated with the preparation and approval of swing pricing policies and procedures by those fund complexes that we believe will use swing pricing will be 4,704 hours, rather than 4,843 hours.¹⁵ We also estimate that it will cost a fund complex \$30,351, rather than \$21,710, to document, review and initially approve these policies and procedures, for a total cost of \$2,549,484, rather than \$3,625,570.¹⁶

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

We are adopting, as proposed, amendments to rule 22c-1 to require a fund that uses

¹⁴ This estimate is based on the following calculations: $48 \text{ hours} + 2 \text{ hours} + 6 \text{ hours} \div 3 = 18.67 \text{ hours}$.

¹⁵ This estimate is based on the following calculation: $(48 + 2 + 6) \text{ hours} \times 84 \text{ fund complexes} = 4,704 \text{ hours}$.

¹⁶ These estimates are based on the following calculations: $24 \text{ hours} \times \201 (hourly rate for a senior accountant) = \$4,824; $24 \text{ hours} \times \463 (blended hourly rate for assistant general counsel (\$433) and chief compliance officer (\$493)) = \$11,112; $3 \text{ hours} \times \$4,465$ (hourly rate for a board of 8 directors) = \$13,395; 3 hours (for a fund attorney's time to prepare materials for the board's determinations) $\times \$340$ (hourly rate for a compliance attorney) = \$1,020; $(\$4,824 + \$11,112 + \$13,395 + \$1,020) = \$30,351$; $\$30,351 \times 84 \text{ fund complexes} = \$2,549,484$. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, 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.

swing pricing to maintain the fund's swing policies and procedures that are in effect, or at any time within the past six years were in effect, in an easily accessible place.¹⁷ In a modification to the proposal, we also are requiring a fund to retain a written copy of the periodic report provided to the board prepared by the swing pricing administrator that describes, among other things, the swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution and any back-testing performed.¹⁸ The retention of these records is necessary to allow the staff during examinations of funds to determine whether a fund is in compliance with its swing pricing policies and procedures and with rule 22c-1, as amended.

In the Proposing Release, we estimated that the burden would be three hours per fund complex to retain the proposed swing pricing records, with 1.5 hours spent by a general clerk and 1.5 hours spent by a senior computer operator. We estimated a time cost per fund complex of \$216.¹⁹ We estimated that the total for recordkeeping related to swing pricing would be 501 hours, at an aggregate cost of \$36,072 for all fund complexes that we believe include funds that would adopt swing pricing policies and procedures.²⁰ Amortized over a three-year period, we believed that the hour burdens and time costs associated with the proposed amendments to rule 22c-1, including the burden associated with the requirements that funds adopt policies and procedures, obtain board approval and retain certain records related to swing pricing, would result in an average aggregate annual burden of 2,115 hours and average aggregate time costs of

¹⁷ See rule 22c-1(a)(3)(iii).

¹⁸ See *id.*

¹⁹ This estimate was based on the following calculations: 1.5 hours x \$57 (hourly rate for a general clerk) = \$85.5; 1.5 hours x \$87 (hourly rate for a senior computer operator) = \$130.5. \$85.5 + \$130.5 = \$216.

²⁰ These estimates were based on the following calculations: 3 hours x 167 fund complexes = 501 hours. 167 fund complexes x \$216 = \$36,072.

\$1,244,595.²¹ We estimated that there were no external costs associated with this collection of information.

We did not receive any comments on the estimated hour and cost burdens for this record retention requirement. The Commission has modified the estimated increase in annual burden hours and total time costs that will result from the amendments based on the modification to the proposal to require funds to retain a written copy of the annual report provided to the board from the swing pricing administrator. We have also modified the estimated increase in annual burden hours and total time costs in light of updated data concerning funds and fund personnel salaries. We estimate that the burden will be four hours, rather than three hours, per fund complex to retain these records, with 2 hours, rather than 1.5 hours, spent by a general clerk and 2 hours, rather than 1.5 hours, spent by a senior computer operator. Based on updates to the industry data figures that were utilized in the Proposing Release, we estimate a time cost per fund complex of \$292, rather than \$216.²² We estimate that the total for recordkeeping related to swing pricing will be 336 hours, rather than 501 hours, at an aggregate cost of \$24,528, rather than \$36,072, for all fund complexes that we believe include funds that would adopt swing pricing policies and procedures.²³

C. Estimated Total Burden

Amortized over a three-year period, we believe that the hour burdens and time costs associated with the amendments to rule 22c-1, including the burden associated with the

²¹ These estimates were 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.

²² This estimate is based on the following calculations: 2 hours x \$58 (hourly rate for a general clerk) = \$116; 2 hours x \$88 (hourly rate for a senior computer operator) = \$176. \$116 + \$176 = \$292.

²³ These estimates are based on the following calculations: 4 hours x 84 fund complexes = 336 hours. 84 fund complexes x \$292 = \$24,528.

requirements that funds adopt policies and procedures, obtain board approval, and periodic review of an annual written report from the swing pricing administrator, and retain certain records and written reports related to swing pricing, will result in an average aggregate annual burden of 1,848 hours, rather than 2,115 hours, and average aggregate time costs of \$874,356, rather than \$1,244,595.²⁴

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to comply with rule 22c-1(a)(3), such as licensing software solutions or for the services of external service providers. The cost burden does not include the hour burden discussed in Item 12. We estimate that rule 22c-1(a)(3) does not impose any burdens other than those discussed in Item 12 above. Although 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. Change in Burden

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

²⁴ These estimates are based on the following calculations: (4,536 hours (year 1) + (3 x 336 hours) (years 1, 2 and 3)) ÷ 3 = 1,848 hours; (\$2,549,484 (year 1) + (3 x \$24,528) (years 1, 2 and 3)) ÷ 3 = \$874,356.

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.