

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 31a-2

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 31(a)(1) of the Investment Company Act of 1940 (the “Act”) (15 U.S.C. 80a-30(a)(1)) requires registered investment companies (“funds”) and certain underwriters, broker-dealers, investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules. Rule 31a-1 under the Act (17 CFR 270.31a-1) specifies the books and records that each of these entities must maintain. Rule 31a-2 under the Act (17 CFR 270.31a-2), which was adopted on April 17, 1944, specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a-1.

Rule 31a-2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a-1(b)(1)-(4).¹
2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years:
 - a. all books and records required under rule 31a-1(b)(5)-(12);²
 - b. all vouchers, memoranda, correspondence, checkbooks, bank statements,

¹ These include, among other records, journals detailing daily purchases and sales of securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting separately for each portfolio security as of the trade date all “long” and “short” positions carried by the fund for its own account, and corporate charters, certificates of incorporation, by-laws and minute books.

² These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, records of all other portfolio purchases or sales, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the investment adviser, and memoranda identifying persons, committees, or groups authorizing the purchase or sale of securities for the fund.

canceled checks, cash reconciliations, canceled stock certificates, and all schedules evidencing and supporting each computation of net asset value of fund shares, and other documents required to be maintained by rule 31a-1(a) and not enumerated in rule 31a-1(b);

- c. any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors;
- d. any record of the initial determination that a director is not an interested person of the fund, and each subsequent determination that the director is not an interested person of the fund, including any questionnaire and any other document used to determine that a director is not an interested person of the company;
- e. any materials used by the disinterested directors of a fund to determine that a person who is acting as legal counsel to those directors is an independent legal counsel; and
- f. any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act (15 U.S.C. 80a-15(c)) in approving the terms or renewal of a contract or agreement between the fund and an investment advisor.³

3. Every underwriter, broker, or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q)

³ Section 15 of the Act requires that fund directors, including a majority of independent directors, annually approve the fund's advisory contract and that the directors first obtain from the adviser the information reasonably necessary to evaluate the contract. The information request requirement in section 15 provides fund directors, including independent directors, a tool for obtaining the information they need to represent shareholder interests.

(“section 17”) for the periods established in those rules.

4. Every depositor of a fund, and every principal underwriter of a fund (other than a closed-end fund), must preserve for at least six years records required to be maintained by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity’s transactions with the fund.
5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be preserved by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) (“section 204”) for the periods specified in those rules.
6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser’s transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, a fund on (i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of rule 31a-2(f). The fund, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.⁴

⁴ In addition, the fund, or person who maintains and preserves records for the fund, must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the fund may request: (A) a legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and must separately store, for the time

We periodically inspect the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. Our staff spends a significant portion of its time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a-1 and to be preserved by rule 31a-2.

On October 13, 2016, the Commission issued a release adopting amendments to rule 31a-2 to require a fund that chooses to use “swing pricing” to create and maintain a record of support for each computation of an adjustment to the net asset value (“NAV”) of the fund’s shares based on the fund’s swing policies and procedures.⁵ The amendments to rule 22c-1 under the Investment Company Act would permit, but not require, registered open-end management investment companies (except money market funds and exchange-traded funds) to use swing pricing, a process of adjusting the NAV of a fund’s shares to pass on to purchasing or redeeming shareholders costs associated with their trading activity.

2. Purpose and Use of the Information Collection

The retention of records, as required by the rule, is necessary to ensure access to material business and financial information about funds and certain related entities. As noted above, we periodically inspect the operations of funds to ensure they are in compliance with the Act and regulations under the Act. Due to the limits on our resources, however, each fund may only be inspected at intervals of several years. In addition, the prosecution of persons who have engaged in certain violations of the federal securities laws may not be limited by timing restrictions. For

required for preservation of the original record, a duplicate copy of the record on any medium allowed by rule 31a-2(f). In the case of records retained on electronic storage media, the fund, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the fund, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

⁵ Investment Company Act Release No. 32316 (Oct. 13, 2016) (the “Adopting Release”).

these reasons, we often need information relating to events or transactions that occurred years ago. Without the requirement to preserve books, records and other documents, our staff would have difficulty determining whether the fund was in compliance with the law in such areas as valuation of its portfolio securities, computation of the prices investors paid and, when purchasing and selling fund shares, types and amounts of expenses the fund incurred, kinds of investments the fund purchased, actions of affiliated persons, or whether the fund had engaged in any illegal or fraudulent activities. As part of our examinations of funds, our staff also reviews the materials that directors consider in approving the advisory contract.

3. Consideration Given to Information Technology

The Electronic Signatures in Global and National Commerce Act⁶ and rule 31a-2(f) permit many records that are required to be maintained and preserved under the rule to be maintained electronically. The Commission's Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”) provides for the automated filing, processing, and dissemination of full disclosure filings. The automation provides for speed, accuracy and public availability of information, generating benefits to investors and financial markets. Although the rule does not require the filing of any documents with the Commission, the Commission may use its EDGAR facility in the future to improve the examination of records that funds and their affiliated entities keep under the rule.

4. Duplication

The requirements of rule 31a-2 are not generally duplicated anywhere else. While funds may currently maintain records under the requirements of rule 31a-1, rule 31a-1 does not specifically require preservation of these records.

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

5. Effect on Small Entities

The recordkeeping requirements of rule 31a-2 do not distinguish between large and small entities. We believe that compliance with rule 31a-2 is not unduly burdensome for large or small entities. Because the use of swing pricing 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 associated with the amendments to rule 31a-2 related to swing pricing.

6. Consequences of Not Conducting Collection

Rule 31a-1 requires funds, certain of their majority-owned subsidiaries, and other related entities to maintain certain records. The frequency with which entities collect this information depends, to a large extent, on the circumstances of the activities and transactions of the fund and these entities. Rule 31a-2 requires funds, their majority-owned subsidiaries, and other related entities to preserve the records required to be maintained under rule 31a-1. Rule 31a-2 also requires funds to maintain advertising materials, materials considered by a fund board each time it approves a fund's advisory contract, materials relating to the independence of legal counsel and fund directors and, for any fund that chooses to use swing pricing, a record of support for each computation of an adjustment to the NAV of the fund's shares based on the fund's swing policies and procedures. If entities did not have to preserve these records, our staff would have difficulty determining whether a fund is in compliance with the Act.

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

Rule 31a-2 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 Act's provisions are legally enforceable. We periodically inspect the operations of funds to ensure compliance with the rules and regulations under the Act; however, each fund may be inspected

only at intervals of several years due to limits on our resources. Furthermore, the prosecution of persons that have engaged in certain violations of the federal securities laws may not be limited by timing restrictions. For these reasons, we often need information relating to events or transactions that occurred years ago. In section 31(a) of the Act,⁷ Congress specifically authorized the Commission to require funds to “maintain and preserve” books and records “for such period or periods” as the Commission may prescribe by rules. Electronic record storage has made long-term retention of records less burdensome.

8. Consultation Outside the Agency

The Commission requested public comment on the collection requirements of rule 31a-2 associated with swing pricing before it submitted this request for revision and approval to the Office of Management and Budget.⁸ Additionally, rule 31a-2 has been previously amended through other rulemaking actions. Comments generally are received from registrants, trade associations, the legal and accounting profession, and other interested parties. In addition, 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 information exchanges. These various forums assist us and our staff in ascertaining the magnitude of paperwork burdens confronting the industry.

The Commission has modified the estimated increase in burden hours associated with the collection requirements of rule 31a-2 associated with swing pricing in consideration of commenters’ concerns that such burdens were underestimated in the Proposing Release,⁹ as well

⁷ 15 U.S.C. 80a-30(a).

⁸ *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”).

⁹ *See* Comment Letter of Dechert LLP (Jan. 13, 2016) (“Dechert Comment Letter”); Comment

as modifications made to the proposal and updates to data figures that were utilized in the Proposing Release. We estimate that estimate that approximately 474 funds (half as many funds as estimated in the Proposing Release) will use swing pricing.¹⁰ In light of the concerns expressed by commenters that the Commission underestimated the operational costs associated with swing pricing, we estimate that each fund that uses swing pricing generally will incur an additional burden of 3 hours, rather than 1 hour per year in order to comply with the amendments to rule 31a-2.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

No PII collected/not applicable

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”) .

¹⁰ 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.

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 31a-2 would only be mandatory for funds that chose to adopt swing pricing. The Commission currently estimates that the annual burden associated with rule 31a-2 is 220 hours per fund, with 110 hours spent by a general clerk at a rate of \$52 per hour and 110 hours spent by a senior computer operator at a rate of \$81 per hour.¹¹ The current estimate of the total annual burden for all funds to comply with rule 31a-2 is approximately 766,480 hours at an estimated cost of \$50,970,920.¹²

We are adopting amendments to rule 31a-2 to require a fund that chooses to use swing pricing to create and maintain a record of support for each computation of an adjustment to the NAV of the fund's shares based on the fund's swing policies and procedures.¹³ This collection of information requirement is mandatory for any fund that chooses to use swing pricing to adjust its NAV in reliance on the adopted amendments to rule 22c-1.

In the proposal, we estimated that approximately 947 funds would use swing pricing and that each fund that uses swing pricing generally would incur an additional burden of 1 hour per year in order to comply with the proposed amendments to rule 31a-2. Accordingly, we estimated

¹¹ The estimated salary rates were derived from SIFMA's Office Salaries in the Securities Industry 2011, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

¹² These estimates were based on the following calculations: 220 hours x 3,484 funds (the estimated number of funds the last time the rule's information collections were submitted for PRA renewal in 2012) = 766,480 total hours; 766,480 hours ÷ 2 = 383,240 hours; 383,240 x \$52/hour for a clerk = \$19,928,480; 383,240 x \$81 rate per hour for a computer operator = \$31,042,440; \$19,928,480 + \$31,042,440 = \$50,970,920 total cost.

¹³ Amendment to rule 31a-2(a)(2).

that the total average annual hour burden associated with the proposed amendments to rule 31a-2 would have been an additional 947 hours at a cost of \$68,169.¹⁴

Based on updates to industry data figures that were utilized in the Proposing Release and the reduction in our estimate of the number of funds in fund complexes that will choose to use swing pricing, for purposes of the PRA analysis, we estimate that approximately 474 funds (half as many funds as proposed) will use swing pricing.¹⁵ In light of the concerns expressed by commenters that the Commission underestimated the operational costs associated with swing pricing discussed above,¹⁶ we estimate that each fund that uses swing pricing generally will incur an additional burden of 3 hours, rather than 1 hour per year in order to comply with the amendments to rule 31a-2. Accordingly, we estimate that the total average annual hour burden associated with the amendments to rule 31a-2 will be an additional 1,422 hours, rather than 947 hours, at a cost of \$103,806, rather than \$68,169.¹⁷

13. Cost to Respondents

The Commission currently estimates that the average external cost of preserving books and records required by rule 31a-2 is approximately \$70,000 per fund at a total cost of

¹⁴ These estimates were based on the following calculations: 1 hour x 947 funds = 947 total hours; 474 hours x \$57 rate per hour for a general clerk = \$27,018; 473 hours x \$87 rate per hour for a senior computer operator = \$41,151; \$27,018 + \$41,151 = \$68,169 total cost.

¹⁵ 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.

¹⁶ 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.

¹⁷ These estimates are based on the following calculations: 3 hour x 474 funds = 1,422 total hours; 711 hours x \$58 rate per hour for a general clerk = \$41,238; 711 hours x \$88 rate per hour for a senior computer operator = \$62,568; \$41,238 + \$62,568 = \$103,806 total cost.

approximately \$243,880,000 per year,¹⁸ but that funds would already spend approximately half this amount to preserve these same books and records, as they are also necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns. Therefore, the Commission estimated that the total annual cost burden for all funds as a result of compliance with rule 31a-2 is approximately \$121,940,000.¹⁹

In the proposal, we estimated that the annual external cost burden of compliance with the information collection requirements of rule 31a-2 would increase by \$300 per fund that engages in swing pricing, for an increase in the total annual cost burden of \$284,100.²⁰ We are modifying this figure in response to commenters' general concerns that the Commission as underestimated the operational costs associated with swing pricing and the reduction in the number of funds we estimate will use swing pricing, as discussed above. We estimate that the annual external cost burden of compliance with the information collection requirements of rule 31a-2 would increase by \$600 per fund, rather than \$300 per fund that engages in swing pricing, for an increase in the total annual cost burden of \$284,400, rather than \$284,100.²¹

14. Cost to the Federal Government

There is no cost to the Federal Government for these recordkeeping activities.

15. Change in Burden

We estimate that the total annual time burden associated with rule 31a-2 will increase by 1,422 hours and that the total annual external cost burden of compliance with rule 31a-2 would

¹⁸ This estimate is based on the following calculation: 3,484 funds (the estimated number of funds the last time the rule's information collections were submitted for PRA renewal in 2012) x \$70,000 = \$243,880,000.

¹⁹ See Submission of OMB Review; and Comment Request, Extension: Rule 31a-2, OMB Control No. 3235-0179, Securities and Exchange Commission, 77 FR 66885 (Nov. 7, 2012).

²⁰ This estimate was based on the following calculation: 947 funds x \$300 = \$284,100.

²¹ This estimate is based on the following calculation: 474 funds x \$600 = \$284,400.

increase by \$284,400 for the estimated 474 funds the staff anticipates will engage in “swing pricing” in reliance on the amendments to rule 22c-1 under the Investment Company Act. The change in burden hours and external cost of compliance is due to the staff’s estimates of the time and costs that would result from our proposed amendments to rule 31a-2 to require a fund that chooses to use swing pricing to create and maintain a record of support for each computation of an adjustment to the NAV of the fund’s shares based on the fund’s swing policies and procedures.

16. Information Collection Planned for Statistical Purposes

Not Applicable.

17. Approval to Omit OMB Expiration Date

Not Applicable.

**18. Exceptions to Certification Statements for Paperwork Reduction Act
Submission**

Not Applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.