

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From
Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Extension: Rule 17e-1

OMB Control No. 3235-0217, SEC File No. 270-224

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (“Paperwork Reduction Act”), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information described below.

Rule 17e-1 (17 CFR 270.17e-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) (the “Investment Company Act”) deems a remuneration as “not exceeding the usual and customary broker’s commission” for purposes of Section 17(e)(2)(A) of the Act (15 U.S.C. 80a-17(e)(2)(A)) if, among other things, a registered investment company’s (“fund’s”) board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is reasonable and fair compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures. Rule 17e-1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii)

maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. The recordkeeping requirements under rule 17e-1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker's commission. Without the recordkeeping requirements, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e-1.

Based on an analysis of fund filings, the staff estimates that approximately 266 funds enter into subadvisory agreements each year.¹ Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e-1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3-1, 10f-3, and 17a-10, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 17e-1 for this contract change would be 0.75 hours.² Assuming that all 266 funds enter into new subadvisory contracts each year make the

¹ Based on data from Morningstar, as of June 30, 2018, there are 12,393 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,594 funds of which have subadvisory relationships (approximately 37%). Based on data from the 2018 ICI Factbook, 720 new funds were established in 2017 (705 open-end funds and exchange-traded funds + 15 closed-end funds (from the ICI Research Perspective, April 2018)). 720 new funds x 37% = 266 funds.

² 3 hours ÷ 4 rules = 0.75 hours.

modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 200 burden hours annually.³

Based on an analysis of fund filings, we estimate that approximately 1,609 funds use at least one affiliated broker. Based on staff experience and conversations with fund representatives, the staff estimates approximately 40 percent of transactions (and thus, 40% of funds) that occur under the rule 17e-1 would be exempt from its recordkeeping and review requirements. This would leave approximately 965 funds⁴ still subject to the rule's recordkeeping and review requirements. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e-1 is approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e-1 to be approximately 48,250 hours,⁵ and the total annual burden of the rule's paperwork requirements is 48,450 hours.⁶

Estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e-1 is mandatory. The information provided under rule 17e-1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

³ This estimate is based on the following calculation: 0.75 hours × 266 funds = 200 burden hours.

⁴ 1,609 funds × 0.6 = 965 funds.

⁵ 965 funds × 50 hours per fund = 48,250 hours.

⁶ 200 hours + 48,250 hours = 48,450 hours.

The public may view the background documentation for this information collection at the following website, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: Shagufta_Ahmed@omb.eop.gov; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street, NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Eduardo A. Aleman
Deputy Secretary

[Date]