

**SUPPORTING STATEMENT FOR**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 17a-10**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 17(a) of the Investment Company Act of 1940 (the “Act”), generally prohibits affiliated persons of a registered investment company (“fund”) from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.<sup>1</sup> Section 2(a)(3) of the Act defines “affiliated person” of a fund to include its investment advisers.<sup>2</sup> Rule 17a-10 permits (i) a subadviser<sup>3</sup> of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (e.g., other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a-10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect

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<sup>1</sup> 15 U.S.C. 80a-17(a).

<sup>2</sup> 15 U.S.C. 80a-2(a)(3)(E).

<sup>3</sup> As defined in rule 17a-10(b)(2). 17 CFR 270.17a-10(b)(2).

to discrete portions of the fund's portfolio.<sup>4</sup> This requirement regarding the prohibitions and limitations in advisory contracts of subadvisers relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 ("PRA").<sup>5</sup>

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

Funds must include in their subadvisory contracts the provisions required under rule 17a-10(a)(2) in order to rely on the exemptions in rule 17a-10 to ensure that the subadviser that engages in the transaction does not influence the fund's investment decision to engage in the transaction.

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

To the extent the rule includes recordkeeping requirements, the Electronic Signatures in Global and National Commerce Act<sup>6</sup> and the conforming amendments to recordkeeping rules under the Investment Company Act permit funds to maintain records electronically.

## **4. Duplication**

The requirement regarding limitations in the subadviser's contracts is similar to conditions in exemptive rules 10f-3<sup>7</sup>(permitting, under certain conditions, a fund to purchase securities from underwriting syndicates whose members include affiliated persons of the purchasing fund), 12d3-1<sup>8</sup> (permitting a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related

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<sup>4</sup> 17 CFR 270.17a-10(a)(2).

<sup>5</sup> 44 U.S.C. 3501-3521.

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

<sup>7</sup> 17 CFR 270.10f-3.

<sup>8</sup> 17 CFR 270.12d3-1.

businesses), and 17e-1<sup>9</sup> (governing the receipt of compensation by a broker affiliated with a fund in connection with securities transactions by the fund). To the extent that a fund relies on more than one of these rules, its subadviser may use the same contract language to satisfy the comparable condition in the other rules.

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

Rule 17a-10's exemptive relief is conditioned upon funds including certain provisions in their advisory contracts to ensure that fund interests are the primary consideration for otherwise prohibited transactions. These provisions apply equally to all funds, including small entities.

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

Rule 17a-10 requires that a fund's subadvisory contract be either initially drafted or amended to qualify for the rule's exemption. This is not a recurring requirement, and therefore less frequent collection is not possible.

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

Not applicable. The collection is not inconsistent with 5 CFR 1320.5(d)(2).

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

The Commission requested public comment on the collection of information requirements in rule 17a-10 before it submitted this request for approval to the Office of Management and Budget. The Commission received no comments in response to this request.

More generally, the Commission and the staff at the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide

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<sup>9</sup> 17 CFR 270.17e-1.

the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

**9. Payment or Gift**

No payment or gift to respondents was provided.

**10. Confidentiality**

No assurance of confidentiality was provided.

**11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

**12. Burden of Information Collection**

The following estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

The staff assumes that all existing funds with subadvisory contracts amended those contracts to comply with the adoption of rule 17a-10 in 2003, which conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.<sup>10</sup> However, the staff assumes that all newly formed subadvised funds, and funds

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<sup>10</sup> Transactions of Investment Companies With Portfolio and Subadviser Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3153 (Jan. 22, 2003)]. We assume that funds formed after 2003 that intended to rely on rule 17a-10 would have included the required provision as a standard element in their initial subadvisory contracts.

that enter into new contracts with subadvisers, will incur the one-time burden by amending their contracts to add the terms required by the rule.

Based on an analysis of fund filings, the staff estimates that approximately 221 funds enter into new subadvisory agreements each year.<sup>11</sup> 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 17a-10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f-3, 12d3-1, and 17e-1, 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 among all four rules. Therefore, we estimate that the burden allocated to rule 17a-10 for this contract change would be 0.75 hours.<sup>12</sup> Assuming that all 221 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 166 burden hours annually, with an associated cost of approximately \$68,890.<sup>13</sup>

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<sup>11</sup> Based on data from Morningstar, as of March 2019, there are 12,407 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,609 funds of which have subadvisory relationships (approximately 37%). Based on data from certain 2019 ICI publications, 597 new funds were established in 2018 (582 open-end funds and exchange-traded funds (from the 2019 ICI Fact Book) + 15 closed-end funds (from the ICI Research Perspective, April 2019)).  $597 \text{ new funds} \times 37\% = 221 \text{ funds}$ .

<sup>12</sup> This estimate is based on the following calculation:  $3 \text{ hours} \div 4 \text{ rules} = 0.75 \text{ hours}$ .

<sup>13</sup> These estimates are based on the following calculations:  $(0.75 \text{ hours} \times 221 \text{ portfolios} = 166 \text{ burden hours})$ ;  $(\$415 \text{ per hour} \times 166 \text{ hours} = \$68,890 \text{ total cost})$ . The Commission's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys, modified to account for a 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of \$415. See Securities Industry and

**Table 1: Burden Estimates for Rule 17a-10**

	<b>Internal Burden Per Response</b>	<b>Wage Rate</b>	<b>Cost of Internal Burden</b>	<b>Annual Cost Burden</b>
<b>CURRENTLY APPROVED ESTIMATES</b>				
Drafting and executing additional provisions in new subadvisory contracts	0.75 hours			\$0
Number of annual responses	319			319
Total annual burden	239 hours	\$380	\$90,820	\$0
<b>PROPOSED ESTIMATES</b>				
Drafting and executing additional provisions in new subadvisory contracts	0.75 hours			\$0
Number of annual responses	221			221
Total annual burden	166 hours	\$415	\$68,890	\$0

**Table 2: Change in Burden Estimates**

	Annual Number of Responses			Annual Time Burden (hours)			Cost Burden (dollars)		
	Previously approved	Proposed estimate	Change	Previously approved	Proposed estimate	Change	Previously approved	Proposed estimate	Change
Rule 17a-10	319	221	-98	239	166	-73	\$0	\$0	\$0

**13. Cost to Respondents**

We estimate that there is no cost burden associated with rule 17a-10, other than the costs of the contract modification burden identified in Item 12 of this Supporting Statement.

**14. Cost to the Federal Government**

There are no costs to the Federal Government associated with rule 17a-10.

**15. Change in Burden**

Rule 17a-10 has a current annual burden of 239 hours. The hour burden associated with rule 17a-10 has decreased by 73 hours to a total of 166 hours since our last burden analysis. This decrease is due to a change in our estimate of the number of funds entering into new contracts with subadvisers from 319 to 221.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.