

**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”)<sup>1</sup> requires registered investment companies (“funds”) and certain underwriters, broker-dealers, investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules.<sup>2</sup> Rule 31a-1 under the Act specifies the books and records that each of these entities must maintain.<sup>3</sup> Rule 31a-2 under the Act specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a-1.<sup>4</sup>

Rule 31a-2 requires the following:

- 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).<sup>5</sup>
- Every fund must preserve for at least six years, and in an easily accessible place for the first two years:
  - all books and records required under rule 31a-1(b)(5)–(12);<sup>6</sup>

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

<sup>2</sup> 15 U.S.C. 80a-30(a)(1).

<sup>3</sup> 17 CFR 270.31a-1.

<sup>4</sup> 17 CFR 270.31a-2.

<sup>5</sup> 17 CFR 270.31a-2(a)(1). These include, among other records, journals detailing daily purchases and sales of securities; general and auxiliary ledgers reflecting all assets, liability, reserve, capital, income, and expense accounts; separate ledgers reflecting 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. 17 CFR 270.31a-1(b)(1)–(4).

<sup>6</sup> 17 CFR 270.31a-2(a)(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, and other options in which the fund has an interest, which it has granted, or which it 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

- all vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates, and all schedules evidencing and supporting each computation of net asset value of fund shares, including schedules evidencing and supporting each computation of an adjustment to net asset value based on swing pricing policies and procedures;<sup>7</sup>
- other documents required to be maintained by rule 31a-1(a) and not enumerated in rule 31a-1(b);<sup>8</sup>
- any advertisement, pamphlet, circular, form letter, or other sales literature addressed or intended for distribution to prospective investors;<sup>9</sup>
- 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;<sup>10</sup>
- 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;<sup>11</sup> and
- any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act in approving the terms or renewal of a contract or agreement between the fund and an investment advisor.<sup>12</sup>
- 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

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fund. 17 CFR 270.31a-1(b)(5)–(12).

<sup>7</sup> 17 CFR 270.31a-2(a)(2).

<sup>8</sup> *Id.*

<sup>9</sup> 17 CFR 270.31a-2(a)(3).

<sup>10</sup> 17 CFR 270.31a-2(a)(4).

<sup>11</sup> 17 CFR 270.31a-2(a)(5).

<sup>12</sup> 17 CFR 270.31a-2(a)(6). 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. 15 U.S.C. 80a-15(c).

adopted under section 17 of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>13</sup> for the periods established in those rules.<sup>14</sup>

- 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 of the Exchange Act to the extent the records are necessary or appropriate to record the entity’s transactions with the fund.<sup>15</sup>
- 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 (the “Investment Advisers Act”)<sup>16</sup> for the periods specified in those rules.<sup>17</sup>
- 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 of the Investment Advisers Act to the extent the records are necessary or appropriate to reflect the adviser’s transactions with the fund.<sup>18</sup>

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 (1) micrographic media, including microfilm, microfiche, or any similar medium, or (2) electronic storage media, including a digital storage medium or system that meets certain requirements.<sup>19</sup> 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.<sup>20</sup>

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<sup>13</sup> 15 U.S.C. 78q.

<sup>14</sup> 17 CFR 270.31a-2(b).

<sup>15</sup> 17 CFR 270.31a-2(c).

<sup>16</sup> 15 U.S.C. 80b-4.

<sup>17</sup> 17 CFR 270.31a-2(d).

<sup>18</sup> 17 CFR 270.31a-2(e).

<sup>19</sup> 17 CFR 270.31a-2(f)(1).

<sup>20</sup> 17 CFR 270.31a-2(f)(2)(i). 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,

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.

## **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 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 Act<sup>21</sup> 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,

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view, and print the records. 17 CFR 270.31a-2(f)(2)(ii). The fund (or person) also must separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by rule 31a-2. 17 CFR 270.31a-2(f)(2)(iii). 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: (1) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (2) 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 (3) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved. 17 CFR 270.31a-2(f)(3).

<sup>21</sup> P.L. 106-229, 114 Stat. 464 (June 30, 2000).

Analysis, and Retrieval System (“EDGAR”) provides for the automated filing, processing, and dissemination of full disclosure filings. This automation has increased the speed, accuracy, and 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 Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or form, or a change in either. The requirements of rule 31a-2 are not generally duplicated elsewhere. While funds may currently maintain records under the requirements of rule 31a-1, rule 31a-1 does not specifically require preservation of these records.

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

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act,<sup>22</sup> to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. 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. The Commission believes that imposing different requirements on smaller funds would not be consistent with investor protection and the purposes of the preservation of records requirements.

#### **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

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<sup>22</sup> 5 U.S.C. 601 *et seq.*

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,<sup>23</sup> 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. Consultations Outside the Agency**

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 informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. The Commission requested public comment on the collection of information requirements in rule 31a-2 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

#### **9. Payment or Gift**

No payment or gift to respondents was provided.

#### **10. Confidentiality**

No assurance of confidentiality was provided.

#### **11. Sensitive Questions**

Rule 31a-2 requires that funds and other registered entities maintain records as prescribed by Commission rules; however, this information collection does not collect personally identifiable information (PII). No information of a sensitive

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<sup>23</sup> 15 U.S.C. 80a-30(a).

nature, including social security numbers, will be required under this collection of information. 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 and costs are made solely for purposes of the Paperwork Reduction Act of 1995<sup>24</sup> 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 is mandatory. Responses to the disclosure requirements will not be kept confidential.

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<sup>24</sup> 44 U.S.C. 3501 *et seq.*

**TABLE 1: BURDEN ESTIMATES FOR RULE 31a-2**

|   | Burden Per Response |                        |                                 |                    |                  | Aggregate Burden     |                         |                         |
|---|---------------------|------------------------|---------------------------------|--------------------|------------------|----------------------|-------------------------|-------------------------|
|   | Internal Burden     | Wage Rate <sup>1</sup> | Cost of Internal Burden         | Annual Cost Burden | Annual Responses | Internal Burden      | Cost of Internal Burden | Annual Cost Burden      |
| <b>CURRENTLY APPROVED ESTIMATES</b>             |                     |                        |                                 |                    |                  |                      |                         |                         |
| General burden of rule 31a-2                    | 110 hours           | ×                      | \$52 (general clerk)            | \$5,720            | 3,484            | 383,240 hours        | \$19,928,480            | \$121,940,000           |
|   | 110 hours           | ×                      | \$81 (senior computer operator) | \$8,910            |                  | \$35,000             | 383,240 hours           |                         |
| Burden associated with swing pricing amendments | 1.5 hours           | ×                      | \$58 (general clerk)            | \$87               | 474              | 711 hours            | \$41,238                | \$284,400               |
|   | 1.5 hours           | ×                      | \$88 (senior computer operator) | \$132              |                  | \$600                | 711 hours               |                         |
| <b>Total annual burden</b>                      |                     |                        |                                 |                    |                  | <b>767,902 hours</b> | <b>\$51,074,726</b>     | <b>\$122,224,400</b>    |
| <b>REVISED ESTIMATES</b>                        |                     |                        |                                 |                    |                  |                      |                         |                         |
| General burden of rule 31a-2                    | 110.2 hours         | ×                      | \$62 (general clerk)            | \$6,832.40         | 3,160            | 348,232 hours        | \$21,590,384            | \$115,372,484.80        |
|   | 110.2 hours         | ×                      | \$95 (senior computer operator) | \$10,469           |                  | \$36,510.28          | 348,232 hours           |                         |
| <b>Total annual burden</b>                      | <b>220.4 hours</b>  |                        |                                 |                    |                  | <b>696,464 hours</b> | <b>\$54,672,424</b>     | <b>\$115,372,484.80</b> |

**Note:**

1. The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.



As summarized in Table 1 above, the Commission has previously estimated that about 3,484 funds are subject to rule 31a-2 each year, incurring 767,902 hours of internal hour burden at a cost of about \$51.1 million.<sup>25</sup> There are 3,160 funds currently operating as of December 31, 2018, all of which are required to comply with rule 31a-2.

**TABLE 2: EFFECT OF SWING PRICING PROVISION**

|   |                 |
|---|-----------------|
| Swing pricing internal burden by general clerk            | 1.5 hours       |
| Swing pricing internal burden by senior computer operator | + 1.5 hours     |
| Total burden associated with swing pricing amendments     | 3 hours         |
| Funds using swing pricing                                 | × 474           |
| Aggregate burden hours from swing pricing                 | 1,422 hours     |
| Funds subject to rule 31a-2                               | ÷ 3,484         |
| <b>Average incremental burden per fund</b>                | <b>~0.40815</b> |

We have revised the estimated internal burden for each fund from 220 hours to 220.4 hours to account for the effects of the swing pricing provision, as summarized in Table 2 above. The hour burden estimates for retaining records under rule 31a-2 are based on our experience with registrants, our experience with similar requirements under the Act and the rules under the Act, and on prior conversations with representatives of the fund industry. The number of burden hours may vary depending on, among other things, the complexity of the fund, the issues faced by the fund, the number of series and classes of the fund, and whether the fund uses swing pricing. As summarized in Table 1 above, we estimate that the total internal burden associated with rule 31a-2 is 696,464 hours at a cost of about \$54.7 million.

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

Cost burden is the cost of goods and services purchased to comply with the requirements of rule 31a-2, such as for the services of outside counsel. The cost burden does not include the hour burden discussed in Item 12 above. As summarized in Table 1 above, the Commission has previously estimated that funds incur about \$122.2 million in external cost burden each year.<sup>26</sup>

<sup>25</sup> We had estimated, based on prior conversations with representatives of the fund industry and past estimates that each fund spent 220 hours per year complying with the general requirements of rule 31a-2, split evenly between administrative and computer operation personnel. We estimated that 474 of these funds would use swing pricing and would incur an additional 3 hours of internal burden to comply with the provision of rule 31a-2 concerning swing pricing.

<sup>26</sup> The Commission previously estimated that the average external cost of preserving books

**TABLE 3: EFFECT OF SWING PRICING PROVISION**

|  |           |
|--|-----------|
| Burden associated with swing pricing amendment | \$600     |
| Funds using swing pricing                      | × 474     |
| <hr/>  |           |
| Aggregate cost burden from swing pricing       | \$284,400 |
| Funds subject to rule 31a-2                    | ÷ 3,484   |
| <hr/>  |           |
| Average incremental burden per fund            | ~\$81.63  |

We have revised the estimated cost burden for each fund from \$35,000 to \$35,081.83 to account for the effects of the swing pricing provision, as summarized in Table 2 above.

**TABLE 4: COST BURDEN INFLATION ADJUSTMENT**

|   |              |
|---|--------------|
| Estimate of cost burden as of Nov. 2016 | \$35,081.83  |
| PCE Index as of Nov. 2016               | ÷ 104.942    |
| PCE Index as of Mar. 2019               | × 109.215    |
| <hr/>                                   |              |
| Estimate of cost burden as of Mar. 2019 | ~\$36,510.28 |

We have further adjusted the estimated cost burden per fund from \$35,081.83 to \$36,510.28 to account for the effects of inflation,<sup>27</sup> as summarized in Table 4 above. Accordingly, as summarized in Table 1 above, we estimate that the total cost burden associated with rule 31a-2 is about \$115.4 million.

#### **14. Costs to the Federal Government**

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

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and records generally required by rule 31a-2 is about \$70,000 per fund, 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 annual cost burden for each fund as a result of general compliance with rule 31a-2 is about \$35,000.

<sup>27</sup> The estimates have been adjusted using the Personal Consumption Expenditures Chain-type Price Index (“PCE Index”). See Personal Consumption Expenditures, Chain-type Price Index, available at <https://fred.stlouisfed.org/series/PCEPI>.

## 15. Changes in Burden

**TABLE 5: CHANGE IN BURDEN ESTIMATES**

|            | Annual Number of Responses |                  |        | Annual Time Burden (hours) |                  |         | Cost Burden (dollars) |                  |                  |
|------------|----------------------------|------------------|--------|----------------------------|------------------|---------|-----------------------|------------------|------------------|
|            | Previously Approved        | Revised Estimate | Change | Previously Approved        | Revised Estimate | Change  | Previously Approved   | Revised Estimate | Change           |
| Rule 31a-2 | 3,484                      | 3,160            | -324   | 767,902                    | 696,464          | -71,438 | \$122,224,400         | \$115,372,484.80 | - \$6,851,915.20 |

As summarized in Table 5 above, the hour burden estimate for compliance with rule 31a-2 has decreased, from 767,902 hours 696,464 hours (a decrease of 71,438 hours). This is due to a decrease in the estimated number of funds subject to rule 31a-2. The cost burden estimate for compliance with rule 31a-2 has decreased from about \$122.2 million to about \$115.4 million (an decrease of about \$6.9 million). This is due to a decrease in the estimated number of funds subject to rule 31a-2, partially offset by the effects of inflation.

### 16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

### 17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

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

The Commission is not seeking an exemption to the certification statement.

## B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.