

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; 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 7d-1

SEC File No. 270-176, OMB Control No. 3235-0311

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collection of information to the Office of Management and Budget for extension and approval.

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-7(d)) (the "Act" or "Investment Company Act") requires an investment company ("fund") organized outside the United States ("foreign fund") to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d-1 (17 CFR 270.7d-1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company ("Canadian fund") may request an order from the Commission permitting it to register under the Act. Although rule 7d-1

by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d-1 as a prerequisite to receiving an order permitting those foreign funds' registration under the Act.

The rule requires a Canadian fund that wishes to register to file an application with the Commission that contains various undertakings and agreements by the fund. The requirement of the Canadian fund to file an application is a collection of information under the Paperwork Reduction Act. Certain of the undertakings and agreements, in turn, impose the following additional information collection requirements:

- (1) the fund must file with the Commission agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;
- (2) the fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file with the Commission an irrevocable designation of the fund's custodian in the United States as agent for service of process;
- (3) the fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;
- (4) the fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15 U.S.C. 77a), and the Securities Exchange Act of 1934 (15 U.S.C. 78a), as applicable; and
- (5) the fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

As noted above, under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that “by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act).” The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Rule 7d-1 also contains certain information collection requirements that are associated with other provisions of the Act. These requirements are applicable to all registered funds and are outside the scope of this request.

The Commission believes that one foreign fund is registered under rule 7d-1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d-1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, certain fund agreements, designations of the fund’s custodian as service agent, and the fund’s list of affiliated persons. The Commission staff estimates that each year under the rule, the active registrant and its directors, officers, and service providers engage in the following collections of information and associated burden hours:

- For the fund and its investment adviser to maintain records in the United States:¹
0 hours: 0 minutes of compliance clerk time.

¹ The rule requires an applicant and its investment adviser to maintain records in the United States (which, without the requirement, might be maintained in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant and its investment adviser, however, already maintain the registrant’s records in the United States and in no other jurisdiction. Therefore, maintenance of the registrant’s records in the United States does not impose an additional burden beyond that imposed by other provisions of the Act. Those provisions are applicable to all registered funds and the compliance burden of those provisions is outside the scope of this request.

- For the fund to update its list of affiliated persons:
2 hours: 2 hours of support staff time.
- For new officers, directors, and service providers to enter into and file agreements requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations:
0.5 hours: 7.5 minutes of director time;
2.5 minutes of officer time;
20 minutes of support staff time.
- For new officers, directors, and investment advisers who are not residents of the United States to file irrevocable designation of the fund's custodian as agent for process of service:
0.25 hours: 5 minutes of director time;
10 minutes of support staff time.

Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 2.75 hours.² We estimate that directors perform 0.21 hours of these burden hours at a total cost of \$930.20,³ officers perform 0.04 of these burden hours at a total cost of \$22.08,⁴ and support staff perform 2.5 of these burden hours at a total cost of \$175.⁵

² This estimate is based on the following calculation: $(0 + 2 + 0.5 + 0.25) = 2.75$ hours.

³ The director estimates are based on the following calculations: $(7.5 \text{ minutes} + 5 \text{ minutes}) / 60 \text{ minutes per hour} = 0.2083$ hours; and $0.2083 \text{ hours} \times \$4465 \text{ per hour} = \930.20 . The per hour cost estimate is based on estimated hourly compensation for each board member of \$558.125 and an average board size of 8 members. The \$4,465 per hour estimate for a fund board of directors includes a CPI inflation adjustment from the 2009 estimate.

⁴ The officer estimates are based on the following calculations: $2.5 \text{ minutes} / 60 \text{ minutes per hour} = 0.0416$ hours; $0.0416 \text{ hours} \times \$530 \text{ per hour} = \$22.08$. The per hour cost estimate, as well as other internal time cost estimates for management and professional earnings, is based on the figure for chief compliance officers found in SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁵ The support staff estimates are based on the following calculations: $2 \text{ hours} + 20 \text{ minutes} + 10 \text{ minutes} = 2.5$ hours; and $2.5 \text{ hours} \times \$70 \text{ per hour} = \$175$. The per hour cost estimate, as well as other internal time cost estimates for office salaries, is based on the figure for compliance clerks found in SIFMA's Office Salaries in the Securities Industry 2013, 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 and overhead.

Thus, the Commission estimates the aggregate annual cost of these burden hours associated with rule 7d-1 is \$1,127.28.⁶

If a fund were to file an application under rule 7d-1 to register under the Act, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied to register under the Act pursuant to rule 7d-1 in the last three years.

As noted above, after registration, a Canadian fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d-1 does not mandate these applications. For purposes of this PRA we are assuming one registrant has filed a substantive supplemental application within the past three years. The Commission staff estimates that the rule would impose an additional information collection burden of 5 hours on a fund to comply with the Commission's application process at a cost of \$6,136.50.⁷ The staff understands that funds also obtain assistance from outside counsel to comply with the Commission's application process and the cost burden of using outside counsel is discussed in Item 13 below.

⁶ This estimate is based on the following calculation: $\$1,127.28 = \$930.20 + \$22.08 + \175 .

⁷ The staff estimates that, on average, the fund's investment adviser spends approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of \$466 per hour, 0.5 hours by an administrative assistant, at a cost of \$81 per hour, and the fund's board of directors spends an additional 1 hour at a cost of \$4,465 per hour for a total of 5 hours, at a total cost of \$6,136.50. This estimate is based on the following calculation: $(3.5 \text{ hours} \times \$466 \text{ per hour}) + (0.5 \text{ hours} \times \$81 \text{ per hour}) + (1 \text{ hour} \times \$4465 \text{ per hour}) = \$6,136.50$.

Therefore, the Commission staff estimates the aggregate annual burden hours of the collection of information associated with rule 7d-1 is 13.25 hours, at a cost of \$9,518.34.⁸ Amortized over three years we estimate an annual cost burden of \$3,172.78 based on an hourly annual burden of 4.42 hours.⁹ These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d-1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated \$20,000 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions, designations for service of process, and the list of affiliated persons). Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be \$20,000 in the first year.

⁸ These estimates are based on the following calculations: 2.75 hours year 1 + 5 hours year 1 + 2.75 hours year 2 + 2.75 hours year 3 = 13.25 hours; \$1,127.28 year 1 + \$6,136.50 year 1 + \$1,127.28 year 2 + \$1,127.28 year 3 = \$9,518.34. As discussed above, the ongoing compliance burdens for an active fund require updates each year, whereas we estimate to receive one supplemental application each three year period.

⁹ The estimates are based on the following calculations: 4.42 hours = 13.25 cumulative burden hours/3 years. Likewise, the amortized cost burden is based on the following calculations: \$9,518.34 cumulative 3-year cost burden/3 years = \$3,172.78 average annual cost burden.

Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful.

These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no fund has applied under rule 7d-1 to register under the Act pursuant to rule 7d-1 in the last three years.

As indicated above, a Canadian or fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d-1 does not mandate these applications. The active registrant filed a substantive supplemental application in the past three years. As noted above, the staff understands that funds generally use outside counsel to prepare the application. The staff estimates that outside counsel spends 10 hours preparing a supplemental application, including 8 hours by an associate and 2 hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as \$400 per hour, based on information received from funds, intermediaries and their counsel. The Commission staff therefore estimates that the fund would obtain assistance from outside counsel at a cost of \$4000.¹⁰

We request written comment on: (a) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on

¹⁰ This estimate is based on the following calculation: 10 hours x \$400 per hour = \$4000.

respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comments to 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.

Jill M. Peterson
Assistant Secretary

July 17, 2019