

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 22c-1

OMB Control No. 3235-0734, SEC File No. 270-793

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 this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22c-1 (17 CFR 270.22c-1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the “Investment Company Act” or “Act”) enables a fund to choose to use “swing pricing” as a tool to mitigate shareholder dilution. Rule 22c-1 is intended to promote investor protection by providing funds with an additional tool to mitigate the potentially dilutive effects of shareholder purchase or redemption activity and a set of operational standards that allow funds to gain comfort using swing pricing as a means of mitigating potential dilution.

The respondents to amended rule 22c-1 are open-end management investment companies (other than money market funds or exchange-traded funds) that engage in swing pricing. Compliance with rule 22c-1(a)(3) is mandatory for any fund that chooses to use swing pricing to adjust its NAV in reliance on the rule.

While we are not aware of any funds that have engaged in swing pricing,¹ we are estimating for the purpose of this analysis that 5 fund complexes have funds that may adopt swing pricing policies and procedures in the future pursuant to the rule. We estimate that the total burden associated with the preparation and approval of swing pricing policies and procedures by those fund complexes that would use swing pricing will be 280 hours.² We also estimate that it will cost a fund complex \$43,406 to document, review and initially approve these policies and procedures, for a total cost of \$217,030.³

Rule 22c-1 requires a fund that uses swing pricing to maintain the fund's swing policies and procedures that are in effect, or at any time within the past six years were in effect, in an easily accessible place.⁴ The rule also requires a fund to retain a written copy of the periodic report provided to the board prepared by the swing pricing administrator that describes, among other things, the swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the

¹ No funds have engaged in swing pricing as reported on Form N-CEN as of August 14, 2019.

² This estimate is based on the following calculation: (48 + 2 + 6) hours x 5 fund complexes = 280 hours.

³ These estimates are based on the following calculations: 24 hours x \$201 (hourly rate for a senior accountant) = \$4,824; 24 hours x \$463 (blended hourly rate for assistant general counsel (\$433) and chief compliance officer (\$493)) = \$11,112; 2 hours (for a fund attorney's time to prepare materials for the board's determinations) x \$340 (hourly rate for a compliance attorney) = \$680; 6 hours x \$4,465 (hourly rate for a board of 8 directors) = \$26,790; (\$4,824 + \$11,112 + \$680 + \$26,790) = \$43,406; \$43,406 x 5 fund complexes = \$217,030. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The staff previously estimated in 2009 that the average cost of board of director time was \$4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately \$4,465.

⁴ See rule 22c-1(a)(3)(iii).

impact on mitigating dilution and any back-testing performed.⁵ The retention of these records is necessary to allow the staff during examinations of funds to determine whether a fund is in compliance with its swing pricing policies and procedures and with rule 22c-1. We estimate a time cost per fund complex of \$292.⁶ We estimate that the total for recordkeeping related to swing pricing will be 20 hours, at an aggregate cost of \$1,460, for all fund complexes that we believe include funds that have adopted swing pricing policies and procedures.⁷

Amortized over a three-year period, we believe that the hour burdens and time costs associated with rule 22c-1, including the burden associated with the requirements that funds adopt policies and procedures, obtain board approval, and periodic review of an annual written report from the swing pricing administrator, and retain certain records and written reports related to swing pricing, will result in an average aggregate annual burden of 113.3 hours, and average aggregate time costs of \$73,803.⁸

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 respondents, including through the use of automated collection techniques or other forms of

⁵ *See id.*

⁶ This estimate is based on the following calculations: 2 hours x \$58 (hourly rate for a general clerk) = \$116; 2 hours x \$88 (hourly rate for a senior computer operator) = \$176. \$116 + \$176 = \$292.

⁷ These estimates are based on the following calculations: 4 hours x 5 fund complexes = 20 hours. 5 fund complexes x \$292 = \$1,460.

⁸ These estimates are based on the following calculations: (280 hours (year 1) + (3 x 20 hours) (years 1, 2 and 3)) ÷ 3 = 113.3 hours; (\$217,030 (year 1) + (3 x \$1,460) (years 1, 2 and 3)) ÷ 3 = \$73,803.

information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Eduardo A. Aleman
Deputy Secretary

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