

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 34b-1**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 34(b) of the Investment Company Act of 1940 (“Investment Company Act”) makes it unlawful for any person to make an untrue statement of a material fact in any documents filed or transmitted pursuant to the Investment Company Act or to omit a statement necessary to prevent such documents from being materially misleading.

Rule 34b-1 under the Investment Company Act governs sales material that accompanies or follows the delivery of a statutory prospectus (“sales literature”).<sup>1</sup> Rule 34b-1 deems to be materially misleading any investment company (“fund”) sales literature required to be filed with the Securities and Exchange Commission (“Commission”) by Section 24(b) of the Investment Company Act<sup>2</sup> that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act.

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<sup>1</sup> A “statutory prospectus” is a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933 (“Securities Act”).

<sup>2</sup> Sales literature addressed to or intended for distribution to prospective investors is deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with a national securities association registered under Section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. *See* rule 24b-3 under the Investment Company Act.

On August 5, 2020 the Commission issued a release proposing amendments that would modernize the disclosure framework for open-end management investment companies.<sup>3</sup> As a part of this proposal, the Commission proposed amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs. The proposed advertising rule amendments would generally apply to any investment company, including mutual funds, ETFs, registered closed end funds, and BDCs. Under the proposed amendments, investment company fee and expense presentations in sales literature would have to include timely and prominent information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, based on the methods of computation that the company's Investment Company Act or Securities Act registration statement form prescribes for a prospectus.

Compliance with the requirements of rule 34b-1 is mandatory and the responses to the information collections would not be kept confidential.

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

Rule 34b-1 is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among funds. The proposed rules are designed to incorporate content, presentation, and timeliness requirements for information about investment company fees and expenses that appears in sales literature. Specifically, investment company sales literature providing fee and expense figures must include: (1) the maximum amount of any sales load, or any other nonrecurring fee; and

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<sup>3</sup> Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 33963 (Aug. 5, 2020).

(2) the total annual expenses without any fee waiver or expense reimbursement arrangement. Under the proposed amendments, investment company fee and expense presentations in sales literature would have to include timely and prominent information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, based on the methods of computation that the company's Investment Company Act or Securities Act registration statement form prescribes for a prospectus.

Compliance with the requirements of rule 34b-1 is mandatory and the responses to the information collections would not be kept confidential.

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

The Commission's electronic filing system ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit their filings to the Commission electronically. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets.

The vast majority of fund sales literature is filed with the Financial Industry Regulatory Authority (FINRA) under Investment Company Act rule 24b-3, which allows any sales material filed with FINRA to be deemed to be filed with the Commission. Rule 34b-1 sales literature that is required to be filed with the Commission is to be filed electronically on EDGAR (17 CFR 232.101(a)(1)(i) and (iv)). The public may access filings on EDGAR through the Commission's Internet web site (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

### **4. Duplication**

The Commission periodically evaluates reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or form or a change in a rule or form. While the proposed new fee and expense presentation requirements in rule 34b-1 are the same as proposed new fee and expense presentation requirements in rule 482, we do not believe that the proposed amendments to rule 34b-1 are duplicative with the proposed amendments to rule 482 because the rule 34b-1 amendments would apply to sales literature that would not otherwise be subject to rule 482. For example, the proposed amendments to rule 34b-1 would apply to sales literature that is excluded from the definition of “prospectus” in section 2(a)(10) of the Securities Act and thus is not subject to rule 482.

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

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The current disclosure requirements for rule 34b-1 sales literature do not distinguish between small entities and other funds. Although the burden on small funds may be greater than those of larger ones, the Commission believes that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of the rule 34b-1 requirements.

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

Since use of sales literature by funds is voluntary, the Commission does not determine the frequency with which funds prepare and file sales literature. Therefore, short of not requiring any collection for sales literature governed by rule 34b-1, the Commission cannot require less frequent collection. Not requiring disclosure of the

information required by rule 34b-1 would harm investors by denying them information that may be useful in making investment decisions. If such sales literature did not contain this information, investors could receive inadequate information or could receive confusing, false, or misleading information. As a result, investor confidence in the securities industry could be adversely affected.

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

This collection is not inconsistent with 5 CFR 1320.5(d)(2).

**8. Consultation Outside the Agency**

The Commission and the Division of Investment Management staff participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens that may confront the industry. Before adopting the proposed amendments, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements. The Commission's solicitation of public comments included estimating and requesting public comments on the burden estimates for all information collections under this OMB control number (i.e., both changes associated with the rulemaking and other burden updates).

**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. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on 1/29/2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

## **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 (“PRA”)<sup>4</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 34b-1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

For the currently approved burden estimates for rule 34b-1, the Commission estimated that on average approximately 208 respondents file 13,004<sup>5</sup> responses that include the information required by rule 34b-1 each year. The burden resulting from the collection of information requirements of rule 34b-1 is estimated to be 2 hours per

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<sup>4</sup> 44 U.S.C. 3501 et seq.

<sup>5</sup> The estimated number of responses to rule 34b-1 is composed of 12,772 responses filed with FINRA and 232 responses filed with the Commission in 2016.

response. The total hourly burden for rule 34b-1 is approximately 26,008 hours per year in the aggregate (with an internal time cost of approximately \$7.3 million).<sup>6</sup>

For purposes of estimating the incremental additional burden associated with the proposed amendments to rule 34b-1, we estimate that there are 351 responses to rule 34b-1 filed annually.<sup>7</sup> We also estimate that approximately 96% of the rule 34b-1 responses (96% x 351 = approximately 337 responses) would be required to comply with the proposed amendments because they either: (1) provide fee and expense figures in qualifying advertisements; or (2) include information regarding a fund's total annual expenses. We estimate that the proposed amendments to require respondents to include fee and expense figures in qualifying advertisements would incrementally increase the burden by 6 hours each year. We estimate that the proposed amendments to require respondents to include information regarding a fund's total annual expenses in advertisements would incrementally increase the burden by 4 hours each year.

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<sup>6</sup> 13,004 responses x 2 hours per response = 26,008 hours.

The internal time cost estimate is based on an estimated wage rate of approximately \$279.75 per hour. The industry burden is calculated by multiplying the total annual hour burden to comply with rule 34b-1 by the estimated hourly wage rate of \$279.95. The estimated wage figure is based on published rates for compliance attorneys, paralegals, and senior compliance examiners from the Securities Industry and Financial Markets Association's Report on 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, yielding effective hourly rates of \$345, \$205, and \$224, respectively. The estimated wage rate is further based on the estimate that attorneys would handle 50% of hours spent on advertising regulation and that paralegals and compliance examiners would handle the remaining 50% in equal parts, yielding a weighted wage rate of \$279.75 (((\$345 x 0.50) + (\$205 x 0.25) + (\$224 x 0.25) = \$279.75).

<sup>7</sup> The estimated number of responses filed with the Commission in 2019.

For purposes of the PRA, we estimate the proposed amendments would result in 3,370 hours of total annual incremental burden under 34b-1.<sup>8</sup> In connection with our estimate of the total incremental burden of the proposed amendments we have estimated only an internal burden cost and no annual external cost burden. At an estimated wage rate of \$336 per hour,<sup>9</sup> we estimate that the incremental annual cost to registrants of the hour burden for complying with the proposed amendments would be \$1,132,320.<sup>10</sup>

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<sup>8</sup> We calculated the total incremental burden as follows: (337 responses that include fee/expense figure disclosures x 6 hours = 2,022 hours) + (337 responses that disclose fee waivers/expense reimbursement arrangements x 4 hours = 1,348 hours) = 3,370 burden hours

<sup>9</sup> These PRA estimates assume that the same types of professionals would be involved in preparing these notices that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based 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 figures are modified by 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.

<sup>10</sup> 3,370 hours per year x \$336 per hour = \$1,132,320 per year.

### RULE 34B-1 PRA ESTIMATES

	Internal initial burden hours	Internal annual hour burden <sup>1</sup>	Wage Rate <sup>2</sup>	Internal Time Costs
<b>PROPOSED ESTIMATES FOR RULE 34B-1</b>				
New general requirements re: fee and expense figure disclosure	9 hours	6 hours <sup>3</sup>		\$2,016
Number of responses to rule 34b-1 that include fee/expense figure disclosure		x 337 responses	\$336 (blended rate for compliance attorney and senior programmer)	x 337 responses
Total annual burden of new requirements for fee and expense disclosure		2,022 hours		\$679,392
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hour	4 hours <sup>4</sup>	\$336 (blended rate for compliance attorney and senior programmer)	\$1,344
Number of responses to rule 34b-1 that disclose fee waivers/expense reimbursement arrangements		x 337 responses		x 337 responses
Total annual burden of requirements for disclosure of fee waivers/expense reimbursement arrangements		1,348 hours		\$452,928
<b>Total annual burden</b>		<b>3,370 hours</b>		<b>\$1,132,320</b>
<b>TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS</b>				
<b>Current burden estimates</b>		<b>26,008 hours</b>		<b>\$7,300,000</b>
<b>Revised burden estimate</b>		<b>29,378</b>		<b>\$8,432,320</b>

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

Cost burden is the cost of services purchased to comply with rule 34b-1, such as for the services of computer programmers, outside counsel, financial printers, and advertising agencies. The cost burden does not include the cost of the hour burden discussed in Item 12 above. Estimates are based on the Commission's experience with advertisements and sales literature. The Commission currently attributes no external cost burden to rule 34b-1.

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

The annual cost of reviewing and processing disclosure documents, including new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies amounted to approximately \$22.9 million in fiscal year 2016, based on the Commission's computation of the value of staff time devoted to this activity and related overhead. However, the vast majority of the responses that are required to be filed under Section 24(b) of the Investment Company Act are in practice filed with FINRA and deemed filed with the Commission pursuant to rule 24b-3.<sup>11</sup> As a result, the estimated cost to the federal government related to rule 34b-1 responses is estimated to be negligible.

### **15. Change in Burden**

As summarized in item 12 above, the estimated hourly burden for complying with rule 34b-1 would increase from 26,008 hours to 29,378 hours (an increase of 3,370 hours).<sup>12</sup> The estimated internal cost burden associated with rule 34b-1 would increase from \$7,300,000 to 8,432,320 (an increase of \$1,132,320). The Commission continues to

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<sup>11</sup> See *supra* note 2.

<sup>12</sup> 26,008 hours +29,378 hours = 55,386hours.

estimate that there is no external cost burden associated with this rule. These changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all information collection burden estimates for this OMB control number.

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

The results of any information collection 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, although the OMB control number will be displayed. Including the expiration date on the electronic version of this form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates.

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

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

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

The collection of information will not employ statistical methods.