

**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.

## **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.

## **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.

## **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. The Commission requested public comment on

the collection of information requirements in rule 34b-1 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**

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>3</sup> and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules

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<sup>3</sup> 44 U.S.C. 3501 et seq.

and forms. Compliance with rule 34b-1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

IC	IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			Burden Cost Burden (\$)		
		<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
	Rule 34b-1									
IC1	Recordkeeping	13004	7713	-5291	26008	46278	20270	0	0	0
<b>Total for all ICs</b>		13004	7713	-5291	26008	46278	20270	0	0	0

The Commission estimates that on average approximately 7,713<sup>4</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 6 hours per response. The total hourly burden for rule 34b-1 is approximately 46,278 hours per year in the aggregate.<sup>5</sup>

Based on a Commission estimate of approximately 46,278 hours and an estimated wage rate of approximately \$298.5 per hour,<sup>6</sup> the total annual hour burden for complying with the requirements of rule 34b-1 is approximately \$13.8 million.<sup>7</sup>

<sup>4</sup> The estimated number of responses to rule 34b-1 is composed of 7362 responses filed with FINRA and 351 responses filed with the Commission in 2019

<sup>5</sup> 7,713 responses x 6 hours per response = 46,278 hours.

<sup>6</sup> 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 \$298.5. 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 \$368, \$219, and \$239, 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 \$298.5  $((\$368 \times 0.50) + (\$219 \times 0.25) + (\$239 \times 0.25) = \$298.50)$ .

<sup>7</sup> 46,278 hours x \$298.50 per hour = \$13,813,983.

### **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 \$21.2 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>8</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 above, the estimated hourly burden has increased from 26,008 hours to 46,278 hours. The increase in burden hours for complying with rule 34b-1 is attributable to an increase in the number of burden hours we estimate per response from 2

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<sup>8</sup> See *supra* note 2.

hours to 6 hours. The Commission continues to estimate that there is no external cost burden associated with this rule.

**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.