

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 11a-3**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 11(a) of the Investment Company Act of 1940 (“Act”) (15 U.S.C. 80a-11(a)) provides that it is unlawful for a registered open-end investment company (“fund”) or its underwriter to make an offer to the fund’s shareholders or the shareholders of any other fund to exchange the fund’s securities for securities of the same or another fund on any basis other than the relative net asset values (“NAVs”) of the respective securities to be exchanged, “unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers.” Section 11(a) was designed to prevent “switching,” the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a-3 (17 CFR 270.11a-3) under the Act permits funds and their principal underwriters, subject to specified conditions, to make exchange offers at other than relative NAVs to the fund’s own shareholders or to shareholders of another fund in the same group of investment companies. Paragraphs (b)(6) and (7) of the rule require a fund to disclose in its prospectus and advertising literature, among other things, the amount of any administrative or redemption fee imposed on an exchange transaction (“disclosure requirement”). Paragraph (a)(2)(i) of the rule requires a fund that imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, the first two in an easily accessible place (“recordkeeping requirement”). Finally, paragraph (b)(8) of the rule requires a fund to give its shareholders a sixty day notice of a termination of an exchange offer or any material

amendment to the terms of an exchange offer (“notice requirement”). The notice is not required when the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load, or redemption fee payable at the time of an exchange, or under certain extraordinary circumstances.

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

Rule 11a-3 is an exemptive rule designed to enable funds to make exchange offers, subject to conditions designed to protect investors against abuses that are addressed by section 11(a) of the Act. The disclosure and notice requirements of the rule are intended to provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers. The recordkeeping requirement is designed to enable the staff to monitor the use of administrative fees imposed in connection with exchange transactions.

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

The Commission's Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”) is designed to automate the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit their filings to the Commission electronically. Although EDGAR currently is limited to disclosure filings, EDGAR may be used in the future to obtain other types of information from sources outside the Commission.

Rule 11a-3 does not require the filing of any information with the Commission. The information covered by the recordkeeping requirement of the rule may be preserved in the manner prescribed in rule 31a-2 under the Act (17 CFR 270.31a-2), including on electronic storage media.

## **4. Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes a rule or a change in a rule. Rule 11a-3 does not impose any duplicative recordkeeping or reporting requirements, and

information similar to that required to be provided by the rule is not available elsewhere.

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

Rule 11a-3 provides an exemption for any fund, including a fund that is a small entity, to make exchange offers. The requirements of the rule must be complied with by any fund that wishes to make exchange offers in reliance on the rule. These requirements are designed to protect investors in funds of all sizes and to provide them with adequate and timely information. The rule does not disproportionately burden small entities. Moreover, the benefits of being able to rely on the rule, rather than seek exemptive relief from the Commission, should outweigh the burdens associated with the rule's requirements, regardless of the size of the fund.

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

The notice requirement in rule 11a-3 is designed to give fund shareholders timely information concerning a termination of an exchange offer or a material change in the terms of an exchange offer. If shareholders did not receive notice of such a change, or received notice only a short time before the change took effect, they may not be able to exercise their right to make an exchange before the change took effect.

If the disclosure requirement were deleted, shareholders would not receive full information on the terms under which exchange transactions take place. If the recordkeeping requirement were deleted, the Commission would not have access to information regarding funds' compliance with the terms of the rule.

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

The recordkeeping requirement in the rule requires certain records to be preserved for at least six years. This requirement is designed to ensure that the Commission staff would be able to adequately evaluate funds' use of administrative fees charged in connection with exchange transactions.

#### **8. Consultation Outside the Agency**

The Commission requested public comment on the collection of information requirements in rule 11a-3 before it submitted this request to the Office of Management and Budget. The Commission received no comments in response to its request.

The Commission and its 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 confronting the industry.

**9. Payment or Gift**

Not applicable.

**10. Confidentiality**

Not applicable.

**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.

**12. Burden of Information Collection**

**Recordkeeping.** The staff estimates that there are approximately 1,397 active open-end investment companies registered with the Commission as of October 2020. The staff estimates that 25 percent of these funds (349 funds) impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time (at an estimated \$63 per hour)<sup>1</sup> per fund, for a

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<sup>1</sup> This estimate of \$63 per hour for clerical work and the other estimated wage rates below are derived from the Securities Industry and Financial Markets Association's ("SIFMA") Office Salaries in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for

total of 349 hours for all funds (at a total annual cost of \$21,987).<sup>2</sup>

**Notice.** The staff estimates that 5 percent of these 1,397 funds (or 70 funds) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time (at an estimated \$419 per hour)<sup>3</sup> and 2 hours of clerical time (at an estimated \$63 per hour) per fund, for a total of approximately 210 hours for all funds to comply with the notice requirement (at a total annual cost of \$38,150).<sup>4</sup> The staff estimates that such notices will be enclosed with other written materials sent to shareholders, such as annual shareholder reports or account statements, and therefore any burdens associated with mailing required notices are accounted for in the burdens associated with Form N-1A registration statements for funds.

The recordkeeping and notice requirements together impose an estimated total burden of 559 hours on all funds (at a total annual cost of \$60,137).<sup>5</sup> The total number of respondents is 419, each responding once a year.<sup>6</sup> The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N-1A registration statement for funds.

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bonuses, firm size, employee benefits and overhead (updated for inflation).

<sup>2</sup> This estimate is based on the following calculations:  $(1,397 \text{ funds} \times 25\% = 349 \text{ funds})$ ;  $(349 \times 1 \text{ (clerical hour)} = 349 \text{ clerical hours})$ ;  $(349 \times \$ 63 = \$21,987 \text{ total annual cost for recordkeeping requirement})$ .

<sup>3</sup> The estimate of \$419 per hour for an Attorney is derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead (adjusted for inflation).

<sup>4</sup> This estimate is based on the following calculations:  $(1,397 \text{ (funds)} \times 5\% = 70 \text{ funds})$ ;  $(70 \times 1 \text{ (attorney hour)} = 70 \text{ total attorney hours})$ ;  $(70 \text{ (funds)} \times 2 \text{ (clerical hours)} = 140 \text{ total clerical hours})$ ;  $(70 \text{ (attorney hours)} + 140 \text{ (clerical hours)} = 210 \text{ total hours})$ ;  $(70 \text{ (attorney hours)} \times \$419 = \$29,330 \text{ total attorney cost})$ ;  $(140 \text{ (clerical hours)} \times \$63 = \$8,820 \text{ clerical cost})$ ;  $(\$29,330 + \$8,820 = \$38,150 \text{ total annual cost})$ .

<sup>5</sup> This estimate is based on the following calculations:  $(210 \text{ (notice hours)} + 349 \text{ (recordkeeping hours)} = 559 \text{ total hours})$ ;  $(\$38,150 \text{ (notice costs)} + \$21,987 \text{ (recordkeeping costs)} = \$60,137 \text{ total annual costs})$ .

<sup>6</sup> This estimate is based on the following calculation:  $(349 \text{ funds responding to recordkeeping requirement} + 70 \text{ funds responding to notice requirement} = 419 \text{ total respondents})$ .

Table 1 below summarizes the currently-approved and updated burdens associated with rule 11a-3.

**Table 1: Summary of Burden Estimates for Rule 11a-3**

	Internal Burden	Wage Rate	Cost of Internal Burden
<b>CURRENTLY-APPROVED BURDEN ESTIMATES</b>			
Recordkeeping Requirement	1 hour	\$59/hr. (clerk)	\$59
Respondents	402 funds		402 funds
Total	402 hours		\$23,718
Notice Requirement	1 hour	\$392/hr. (attorney)	\$392
	2 hours	\$59/hr. (clerk)	\$118
Respondents	80 funds		80 funds
Total	240 hours		\$40,800
Total Responses (Recordkeeping + Notice)	482		
Total Burden (Recordkeeping + Notice)	642 hours		\$64,518
<b>UPDATED BURDEN ESTIMATES</b>			
Recordkeeping Requirement	1 hour	\$63/hr. (clerk)	\$63
Respondents	349 funds		349 funds
Total	349 hours		\$21,987
Notice Requirement	1 hour	\$419/hr. (attorney)	\$419
	2 hours	\$63/hr. (clerk)	\$126
Respondents	70 funds		70 funds
Total	210 hours		\$38,150
Total Responses (Recordkeeping + Notice)	419		
Total Burden (Recordkeeping + Notice)	559 hours		\$60,137

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

The rule is not estimated to impose any cost burdens other than those discussed in item 12 above.

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

The rule does not impose any additional costs on the Federal government. The rule's recordkeeping requirement assists the Commission staff in its examination efforts. The annual

cost of reviewing and processing disclosure documents, including new registration statements, post effective amendments, proxy statements, shareholder reports, and other filings of investment companies amounted to approximately \$21.2 million in fiscal year 2019, based on the Commission's computation of the value of staff time devoted to these activities and related overhead.

**15. Changes in Burden**

The decrease in the number of annual responses from 482 to 419 is due to a decrease in the number of funds registered with the Commission. The decrease in the estimated total annual burden hours from 642 hours to 559 hours is due to a similar decrease in the estimated number of active registered open-ended funds.

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

Not applicable.

**17. Approval to Omit OMB Expiration Date**

Not applicable.

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

**Submission**

Not applicable.

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

Not applicable.