

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 17e-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 17(e)(2)(A) of the Investment Company Act of 1940 (the “Investment Company Act”)¹ limits the remuneration a broker affiliated with a registered investment company (“fund”) may receive in connection with the sale of securities to or by the fund or controlled company thereof, to no more than “the usual and customary broker’s commission if the sale is effected on a securities exchange.”² Rule 17e-1 under the Investment Company Act deems a remuneration as “not exceeding the usual and customary broker’s commission” for purposes of Section 17(e)(2)(A) if, among other things, the fund’s board of directors has adopted procedures reasonably designed to provide that the remuneration to the affiliated broker is reasonable and fair compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary.³ In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures (“review requirement”). Rule 17e-1(d) also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-17(e)(2)(A).

³ 17 CFR 270.17e-1.

each transaction subject to the rule setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board (“recordkeeping requirement”). Funds are not required to meet the reporting and recordkeeping requirements for transactions in which the person acting as a broker is a person permitted to enter into a transaction with the fund by 17 CFR 270.17a-10 (“rule 17a-10”).⁴

2. Purpose and Use of the Information Collection

The review and recordkeeping requirements under rule 17e-1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker’s commission. Without the recordkeeping requirement, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e-1.

3. Consideration Given to Information Technology

To the extent the rule includes recordkeeping requirements, the Electronic Signatures in Global and National Commerce Act⁵ and the conforming amendments to recordkeeping rules under the Investment Company Act permit funds to maintain records electronically.

⁴ See 17 CFR 270.17e-1(b)(3) and (d)(2). Rule 17a-10 permits certain subadvisers and affiliated persons of such subadvisers to enter into transactions with a fund if, among other things, the advisory contracts of the subadviser that is (or whose affiliated person is) entering into the transaction, and any subadviser that is advising the fund (or portion of the fund) entering into the transaction, prohibit them from consulting with each other concerning transactions for the fund in securities or other assets. See 17 CFR 270.17a-10(a)(2).

⁵ P.L. 106-229, 114 Stat. 464 (June 30, 2000).

4. Duplication

Section 31(a) of the Investment Company Act and rules 31a-1 and 31a-2 thereunder, require investment companies to maintain and preserve records similar to those required to be kept under rule 17e-1. Rule 17e-1 does not require that duplicate records be kept, but reiterates the requirement to maintain and preserve such records.

5. Effect on Small Entities

The recordkeeping requirements of rule 17e-1 apply equally to all funds subject to the rule, regardless of size. The burden on smaller investment companies may be greater than for larger investment companies. This burden includes the cost of reviewing transactions and maintaining records. The Commission believes, however, that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of the rule's requirements. 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.

6. Consequences of Not Conducting Collection

Rule 17e-1(c) requires the investment company to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years a written record of each transaction subject to the rule setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. Less frequent recordkeeping requirements would impair the Commission's ability to ascertain compliance with the rule.

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

Rule 17e-1 requires funds to preserve certain records for six years and other records permanently. We believe that the long-term retention of records is necessary to carry out our examination and enforcement responsibilities, and our mandate to ensure that the Investment Company Act's provisions are legally enforceable. We periodically inspect the operations of funds to ensure compliance with the rules and regulations under the Investment Company Act; however, each fund may be inspected only at intervals of several years due to limits on our resources. Furthermore, Congress has placed no time limit on the prosecution of persons engaged in certain types of conduct that violate the securities laws. For these reasons, we often need information relating to events or transactions that occurred years ago. In Section 31(a) of the Investment Company Act, Congress specifically authorized the Commission to require funds to maintain and preserve books and records for such periods as the Commission may prescribe

by rules.⁶ Computerized record storage has made long-term retention of records less burdensome.

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management 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. The Commission requested public comment on the collection of information requirements in rule 17e-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 this 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.

⁶ 15 U.S.C. 80a-30(a).

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 1995⁷ and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Based upon an analysis of fund filings on Form N-CEN, approximately 1,640 funds report reliance on rule 17e-1. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e-1 is approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e-1 to be approximately 82,000 hours.⁸ We further estimate that, of these:

- 60 percent (49,200 hours) are spent by senior accountants, at an estimated hourly wage of \$221,⁹ for a total of approximately \$10,873,200 per year;¹⁰
- 30 percent (24,600 hours) are spent by in-house attorneys at an estimated hourly wage of \$425, for a total of approximately \$10,455,000 per year;¹¹ and

⁷ 4 U.S.C. 3501 *et seq.*

⁸ 1,604 funds x 50 hours per fund = 82,000 hours.

⁹ The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figures are also based on published rates for senior accountants and in-house attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of \$221 and \$425, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

¹⁰ 49,200 hours x \$221 per hour = \$10,873,200.

¹¹ 24,600 hours x \$425 per hour = \$10,455,000.

- 10 percent (8,200) are spent by the funds' board of directors at an hourly cost of \$4,770, for a total of approximately \$39,114,000 per year.¹²

Based on these estimated wage rates, the total cost to the industry of the hour burden for complying with the review and recordkeeping requirements of rule 17e-1 is approximately \$60,442,200.¹³

Table 1: Summary of Revised Annual Responses, Burden Hours, and Burden Hour Costs Estimates for Each Information Collection

IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			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>
IC1: Review and Record-keeping	1,609	1,640	31	48,450	82,000	33,550	0	0	0

13. Cost to Respondents

There is no annual cost burden associated with complying with the information collection requirements in rule 17e-1. The cost burden does not include the cost of the hour burden discussed in Item 12 above.

14. Cost to the Federal Government

The rule does not require anything to be filed with the Commission. Commission staff may, in the course of routine fund inspections, monitor compliance with the rule.

15. Changes in Burden

The increase in the amount of annual responses and annual time burden is attributable to two factors. First, we are using data provided on Form N-CEN for determining the number of

¹² 8,200 hours x \$4,770 per hour = \$39,114,000. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

¹³ \$10,873,200 + \$10,455,000 + \$39,114,000 = \$60,442,200.

respondents to the reporting and recordkeeping requirements, which we had not done in prior submissions. This results in an increase of the number of respondents to those elements of the collection from 965 respondents to 1,640. Secondly, prior submissions had included a third element to the collection, one relating to the rule's exception for subadvisory contracts that meet the requirements of rule 17a-10. However, because rule 17e-1 does not contain any specific subadvisory contract requirements and we have already accounted for the burdens and costs for entering into these subadvisory contracts in the information collection relating to rule 17a-10, we are not including those burdens and costs in the rule 17e-1 information collection. Nonetheless, because the hour estimates are higher on a per-respondent basis for the reporting and recordkeeping requirements, those estimates have increased in this submission compared to prior years.

16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

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.