

**SUPPORTING STATEMENT****For the Paperwork Reduction Act Information Collection Submission for  
Rule 17j-1****A. JUSTIFICATION****1. Necessity for the Information Collection**

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (“personal investment activities”). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Section 17(j) of the Investment Company Act of 1940 (the “Investment Company Act”) (15 U.S.C. 80a-17(j)) makes it unlawful for persons affiliated with a registered investment company (“fund”) or with the fund’s investment adviser or principal underwriter (each a “17j-1 organization”), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission’s rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j-1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j-1 imposes certain requirements on 17j-1 organizations and “Access Persons”<sup>1</sup> of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j-1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j-1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,<sup>2</sup> to: (i) adopt a written codes of ethics; (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval; (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code; (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j-1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code; (v) identify Access Persons and

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<sup>1</sup> Rule 17j-1(a)(1) defines an “access person” (i) as “any Advisory Person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.” The definition of Access Person also includes “Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.”

<sup>2</sup> A “Covered Security” is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers’ acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j-1(a)(4).

notify them of their reporting obligations; and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,<sup>3</sup> to file: (i) within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the Access Person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j-1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

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

Rule 17j-1 provides for oversight by a fund's board of directors of the codes of ethics and procedures employed by the fund, its investment advisers and underwriters to prevent fraudulent, deceptive, or manipulative acts in connection with the purchase or sale by persons associated with those entities of securities held or to be acquired by the fund. Without the rule fund boards and the Commission would be hampered in their ability to monitor fully the conduct of such persons for activities that are fraudulent, deceptive or manipulative.

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

Some 17j-1 entities employ computerized transaction reporting and recordkeeping systems to reduce the burden in connection with rule 17j-1. Although these systems can impose

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<sup>3</sup> Rule 17j-1(d)(2) contains the following exceptions: (i) an Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director of the fund, who would otherwise be required to report solely by reason of being a fund director and who does not have information with respect to the fund's transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser's Act of 1940; (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j-1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j-1 organization; and (vi) an Access Person need not make quarterly transaction reports with respect to transactions effected pursuant to an Automatic Investment Plan.

substantial start-up and maintenance costs, they can help to reduce the information collection burdens arising under rule 17j-1. The Commission permits the use of such technologies to comply with rule 17j-1.

#### **4. Duplication**

The Commission is not aware of any duplicate reporting or recordkeeping requirements. Rule 17j-1(d)(2)(iv) under the Investment Company Act relieves an Access Person of the duty to file reports if those reports would duplicate reports required by rules under the Investment Advisers Act of 1940.<sup>4</sup> Rule 17j-1(d)(2)(v) exempts an Access Person from filing the quarterly transaction report if it would duplicate information already received by the 17j-1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j-1 organization. Information collected under the rule is intended to improve board oversight of personal investment activities of fund personnel. Similar information would not achieve that goal.

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

All rule 17j-1 organizations, regardless of size, must adopt a code of ethics and keep records of reports submitted by Access Persons. The reporting and recordkeeping requirements for small entities could not be reduced without risking harm to investors' interests.

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

In order for fund boards to play a meaningful oversight role, it is necessary for them to receive no less frequently than annually reports from the fund, its investment advisers and underwriters regarding issues arising under the code of ethics. Rule 17j-1, by requiring Access Persons to provide initial holdings reports, quarterly transactions reports, and annual holdings reports, enables rule 17j-1 organizations to monitor the securities transactions of Access Persons to ensure compliance with their codes of ethics. Less frequent collection of such reports would hinder these organizations from enforcing their codes.

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

Not applicable.

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

The Commission requested public comment on the collection of information requirements in rule 17j-1 before it submitted this request for approval to the Office of Management and Budget. The Commission received no comments in response to this request.

More generally, the Commission and the 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

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<sup>4</sup> Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) [(69 FR 41696 (Jul. 9, 2004)], available at <https://www.sec.gov/rules/final/ia-2256.pdf>.

ascertaining and acting upon the 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.

**12. Burden of Information Collection**

As noted above, Access Persons must file initial and annual holdings reports and quarterly transaction reports. Investment personnel must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement.

In addition, rule 17j-1 organizations have a number of responsibilities, most of which are carried out at the fund complex level,<sup>5</sup> arising from information collection requirements under rule 17j-1. The organizations must notify Access Persons of their reporting obligations, prepare an annual rule 17j-1 report and certification for the board, document their approval or rejection of IPO and private placement requests, maintain annual rule 17j-1 records, maintain electronic reporting and recordkeeping systems, amend their codes of ethics as necessary, and, for new fund complexes, adopt a code of ethics.

Estimates concerning the burdens associated with these information collections are set forth in the tables below. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules. Reporting burdens may differ substantially across respondents.

As reflected below in Table 1, we estimate that the total annual burden of complying with the information collection requirements associated with rule 17j-1 is approximately 376,628 burden hours, the internal cost of which is approximately \$69,272,613.

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<sup>5</sup> The staff estimates that there are 804 fund complexes currently operating.

**Table 1: Updated Annual Burden Hours and Associated Internal Cost Estimates**

Information Collection	Annual Hours Per Person or Complex	Annual Aggregate HOURS	Person Responsible	Hourly Rate (\$)¹	Annual Aggregate Internal Cost (\$)
Initial Holdings Report	2	12,864²	New Access Person	255³	3,280,320⁴
Quarterly Transaction Report	.25	6,250⁵	Access Person	255	1,593,750⁶
Annual Holdings Report	.75	52,500⁷	Access Person	255	13,387,500⁸
IPO/Private Placement Preapproval Request	1	4,824⁹	Investment Personnel	255	1,230,120¹⁰
Informing Access Persons of Reporting Obligation	3	2,412	Compliance Manager	339	817,668¹¹
Preparation of Annual Report to Board and Certification	8.5	6,834	Chief Compliance Officer (50%) <u>Attorney for Fund Complex (50%)</u>	580	3,536,595¹²
Documentation of IPO/Private Placement Approval/Rejection	3 (.5 hours per request)	2,412	Chief Compliance Officer	580	1,398,960¹³
Rule 17j-1 Recordkeeping, Review and Analysis	300	241,200	Chief Compliance Officer (5%) <u>Compliance Clerk (95%)</u>	580 <u>68</u>	22,576,320¹⁴
Maintenance of Computer Systems for Use in 17j-1 Reporting and Recordkeeping	50	40,200	Programmer Analyst	263	10,572,600¹⁵
Preparation and Board Approval of New Code of Ethics for New Fund Complex	28	700¹⁶	Chief Compliance Officer (40%) <u>Attorney for Fund Complex (40%)</u> <u>Board of Directors (20%)</u>	580 <u>455</u> <u>4770¹⁷</u>	812,700¹⁸
Preparation and Board approval of Material Amendments to Existing Codes of Ethics, Implementing Policies and Procedures, and Board Review and Certification	8	6,432	Chief Compliance Officer (25%) <u>Attorney for Fund Complex (50%)</u> <u>Board of Directors (25%)</u>	580 <u>455</u> <u>4770</u>	10,066,080¹⁹
<b>TOTAL</b>		<b>376,628 hours</b>			<b>\$69,272,613 Internal costs</b>

*Notes to Table 1:*

- <sup>1</sup> All hourly rates used in this analysis are derived from SIFMA's Management and Professional Earnings in the Securities Industry (2013), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 or 5.35 to account for bonuses, firm size, employee benefits and overhead.
- <sup>2</sup> Based on the following calculation: 6,432 Access Persons × 2 hours = 12,864 hours. We estimate that there are approximately 8 new Access Persons per fund complex each year and 6,432 total new Access Persons each year (8 new Access Persons × 804 fund complexes = 6,432 new Access Persons). In addition, we estimate that the total number of Access Persons remains approximately steady due to attrition.
- <sup>3</sup> We estimate that, on average, the time for Access Persons required to complete initial holdings reports and other transaction reports costs \$255 per hour. Although the hourly rates for Access Persons (typically, portfolio managers, directors and other officers of the fund) differ, we use \$255, the rate of a typical mid-level portfolio manager.
- <sup>4</sup> Based on the following calculation: 12,864 hours × \$255 rate = \$3,280,320 in internal costs.
- <sup>5</sup> We estimate that annually 25,000 quarterly transactions reports are filed. Access Persons do not have to file such reports in certain instances including, for example, when they have not engaged in any securities transactions during a particular quarter, or when the relevant information is contained in duplicate broker trade confirmations or account statements received by the firm. This is based on the following calculation: (25,000 quarterly reports × .25 hour) = 6,250 hours.
- <sup>6</sup> Based on the following calculations: 25,000 quarterly reports × .25 hour = 6,250 hours; 6,250 hours × \$255 rate = \$1,593,750.
- <sup>7</sup> Each of the approximately 70,000 Access Persons must file an annual holdings report. This is based on the following calculation: (70,000 Access Persons × .75 hour = 52,500 hours).
- <sup>8</sup> Based on the following calculation: 52,500 hours × \$255 rate = \$13,387,500.
- <sup>9</sup> We estimate that each of the 804 fund complexes receives approximately 6 IPO/Placement Preapproval such requests each year, for a total of approximately 4,824 such requests filed each year (804 x 6 requests = 4,824 requests annually).
- <sup>10</sup> Based on the following calculations: 4,824 IPO requests × 1 hour = 4,824 hours; 4,824 hours × \$255 rate (for intermediate portfolio manager) = \$1,230,120.
- <sup>11</sup> Based on the following calculations: 804 fund complexes × 3 hours = 2,412 hours; 2,412 hours × \$339 rate (for compliance manager) = \$817,668.
- <sup>12</sup> This is based on the following calculations: 804 fund complexes × 8.5 hours = 6,834 hours (rounded to nearest hour); 6,834 ÷ 2 = 3,417 hours (50% division between CCO and attorney); 3,417 hours × \$580 rate = \$1,981,860 CCO costs; 3,417 hours × \$455 rate = \$1,554,735 attorney costs; \$1,981,860 CCO costs + \$1,554,735 attorney costs = \$3,536,595.
- <sup>13</sup> This is based on the following calculations: (4,824 IPO requests × .5 hour for processing each request = 2,412; 2412 hours x \$580 rate = \$1,398,960.
- <sup>14</sup> This is based on the following calculations: 804 fund complexes × 300 hours = 241,200 hours; 241,200 x .95 = 229,140 hours of clerk time; 241,200 x .05 = 12,060 CCO hours; 12,060 × \$580 (CCO rate) = \$6,994,800; 229,140 hours × \$68 (clerk rate) = \$15,581,520; \$6,994,800 (CCO costs) + \$15,581,520 (clerk costs) = \$22,576,320 total costs).
- <sup>15</sup> This is based on the following calculations (804 funds complexes x 50 hours = 40,200 hours; 40,200 hours x \$263rate = \$10,572,600.
- <sup>16</sup> We estimate that 28 new fund complexes are formed each year. 28 x 25 hours = 700 hours.
- <sup>17</sup> We estimate that a fund board's hourly rate is \$4,770 per hour (based on 2019 data adjusted for inflation).
- <sup>18</sup> Based on the following calculations: 28 new fund complexes × 25 hours = 700 hours; 700 hours x .40 = 280 hours (40% each for CCO and attorney); 700 hours x .20 = 140 hours (20% board time); 140 hours × \$580 (CCO rate) = \$81,200; 140 hours × \$455 (attorney rate) = \$63,700; 140 hours × \$4,770 (board rate) = \$667,800; \$81,200 (CCO costs) + \$63,700 (attorney costs) + \$667,800 (board costs) = \$812,700.
- <sup>19</sup> Based on the following calculations: 804 fund complexes × 8 hours = 6,432 hours; 6,432 hours x .25 = 1,608 hours (25% division each for CCO and Board); 6,432 hours x .50 = 3,216 hours (attorney time); 1,608 hours × \$580 (CCO rate) = \$932,640; 3,216 hours × \$455 (attorney rate) = \$1,463,280; 1,608 hours × \$4,770 (board rate) = \$7,670,160; \$932,640 (CCO costs) + \$1,463,280 (attorney costs) + \$7,670,160 (board costs) = \$ 10,066,080.

We further estimate that annually there are approximately 85,927 respondents under rule 17j-1, of which 15,927 are rule 17j-1 organizations<sup>6</sup> and 70,000 are Access Persons. In the aggregate, these respondents make approximately 107,363 responses annually.<sup>7</sup>

**Table 2: Summary of Revisions to Annual Responses, Burden Hours, and External Costs Estimates**

Information Collection	Annual No. of Responses			Annual Time Burden (Hrs.)			External 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>
Initial Holdings Report	6,264	6,432	168	12,528	12,864	336			
Quarterly Transaction Report	25,000	25,000	0	6,250	6,250	0			
Annual Holdings Report	70,000	70,000	0	52,500	52,500	0			
IPO/Private Placement Preapproval Request	4,698	4,968	504	4,968	4,698	504			
Informing Access Persons of Reporting Obligation	n/a	n/a	n/a	2,349	2,412	63			
Preparation of Annual Report to Board and Certification	783	804	21	6,656	6,834	178			
Documentation of IPO/Private Placement Approval/Rejection	n/a	n/a	n/a	2,349	2,412	63			
Rule 17j-1 Recordkeeping, Review and Analysis	n/a	n/a	n/a	234,900	241,200	6,300			
Maintenance of Computer Systems for Use in 17j-1 Reporting and Recordkeeping	n/a	n/a	n/a	39,150	40,200	1,050			
Preparation and Board Approval of New Code of Ethics for New Fund Complex	18	28	10	450	700	250			
Preparation and Board approval of Material Amendments to Existing Codes of Ethics, Implementing Policies and Procedures, and Board Review and Certification	275	275	0	6,264	6,432	168			
<b>TOTAL</b>	<b>107,038</b>	<b>107,363</b>	<b>+325</b>	<b>368,094</b>	<b>376,628</b>	<b>+8,534</b>	<b>\$3,915,000</b>	<b>\$4,020,000</b>	<b>+\$105,000</b>

**Note to Table 2:**

<sup>1</sup> Table 1 includes several collections of information that arise from the same annual response. Here, the number of responses for those collections are delineated with “n/a” because they are already accounted for under other items in Table 2.

<sup>6</sup> As of October 2021, there were approximately 14,570 funds series (excluding money market funds), 1,039 investment advisers to funds (excluding sub-advisors), and 318 principal underwriters to funds, for a total of 15,927 rule 17j-1 organizations (14,570 + 1,039 + 308 = 15,927).

<sup>7</sup> Based on the following calculation: (6,432 initial holdings reports by Access Persons + 25,000 quarterly transaction reports by Access Persons + 70,000 annual holdings reports by Access Persons + 4,824 preapproval requests by Access Persons for purchases of initial public offerings and private placements + 804 annual certifications by fund boards + 275 annual material amendments + 28 new codes of ethics for new fund complexes = 107,363 annual responses).

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

We estimate that there is an annual external cost burden approximately \$5,000 per fund complex, for a total of \$4,020,000<sup>8</sup> associated with complying with the information collection requirements in rule 17j-1.<sup>9</sup> This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j-1 recordkeeping. These external cost estimates are separate from the internal burden hour cost estimates. The estimate of the average cost burden is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules. Reporting burdens may differ substantially across respondents.

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

There is no cost to the federal government of administering the information collection requirements in rule 17j-1 under the Investment Company Act.

### **15. Changes in Burden**

The increase in burden hours from 368,094 to 376,628 (or 8,534 hours) to comply with the requirements of rule 17j-1 is due to an increase in the number of fund complexes. Likewise, the increase in external costs from \$3,915,000 to \$4,020,000 (or \$105,000) to comply is also due to the increased number of fund complexes.

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

Not applicable.

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

Not applicable.

### **18. Exception to Certification Statement for Paperwork Reduction Act Submissions**

Not applicable.

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<sup>8</sup> This estimate is based on the following calculation: \$5,000 external costs × 804 fund complexes = \$4,020,000.

<sup>9</sup> The cost burden associated with filing of new and amended codes of ethics on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) is included in the Paperwork Reduction Act estimates for the relevant forms to which these codes must be appended.



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

Not applicable.