

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 35d-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 35(d) of the Investment Company Act of 1940 (“Investment Company Act”)¹ prohibits a registered investment company from adopting as part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading and authorizes the Commission, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.² Rule 35d-1 under the Investment Company Act defines as “materially deceptive and misleading” for purposes of Section 35(d), among other things, a name suggesting that a registered investment company or series thereof (a “fund”) focuses its investments in a particular type of investment or investments, in investments in a particular industry or group of industries, or in investments in a particular country or geographic region, unless, among other things, the fund adopts a policy to invest at least 80% of the value of its assets in the type of investment, or in investments in the industry, country, or geographic region, suggested by its name (an “80% investment policy”).³ The names rule imposes a similar 80% investment policy requirement for funds that have names suggesting that a fund’s distributions are exempt from federal income tax or from

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-34(d).

³ 17 CFR 270.35d-1. A policy that a fund must adopt under rule 35d-1 is referred to as an “80% investment policy” and the fund’s investments invested in accordance with this policy as the fund’s “80% basket.”

both federal and state income tax (“tax-exempt funds”). Rule 35d-1 further requires either that the 80% investment policy be fundamental or, in the case of funds other than tax-exempt funds, that the fund has adopted a policy to provide its shareholders with at least 60 days prior notice of any change in the investment policy (“notice to shareholders”).

On May 25, 2022, the Commission proposed amendments to rule 35d-1.⁴ Under this proposal, the scope of funds covered by the 80% investment policy requirement of rule 35d-1 would be expanded. In addition to those fund names currently subject to the rule, the proposal would specify that any fund with a name suggesting that the fund focuses its investments in investments that have, or whose issuers have, characteristics suggested by the fund’s name would have to adopt an 80% investment policy.

The Commission further proposed to update rule 35d-1’s notice requirement expressly to address funds that use electronic delivery methods to provide information to their shareholders. The proposed amendments also would require notices not only to describe a change in the fund’s 80% investment policy, but also a change to the fund’s name that accompanies such an investment policy change.

The proposed amendments would also include certain new recordkeeping requirements. The amendments would newly require a fund that is required to adopt an 80% investment policy to maintain a written record documenting its compliance with the rule, including the fund’s record of which assets are invested in the fund’s 80% basket, the basis for including each such asset in the fund’s 80% basket, as well as the operation of its 80% investment policy. Funds that do not adopt an 80% policy would be required

⁴ Investment Company Names, Investment Company Act Release No. 34593 (May 25, 2022).

to maintain a written record of the fund's analysis that an 80% policy is not required under rule 35d-1. A fund also would be required to keep records of any notice sent to the fund's shareholders pursuant to the rule.

Rule 35d-1, including the proposed amendments, contains collection of information requirements. These collection of information requirements include, as detailed in the chart below, the proposed notice requirement and recordkeeping requirements (those for funds that are required to adopt an 80% investment policy, and those for funds that do not adopt an 80% investment policy).

2. Purpose and Use of the Information Collection

Rule 35d-1 is designed to address certain broad categories of investment company names that, in the Commission's view, are likely to mislead an investor about a company's investments and risks. The rule's provisions, including those that would be added as a result of the proposal, are intended to further that goal. For example, the rule's notice to shareholders provision is intended to ensure that when shareholders purchase shares in a fund based, at least in part, on its name, and with the expectation that it will follow the investment policy suggested by that name, they will have sufficient time to decide whether to redeem their shares in the event that the fund decides to pursue a different investment policy. Further, the proposed expansion of fund names covered by the rule is designed to help ensure that a fund's investment activity supports the investment focus its name communicates and, thus, the investor expectations the name creates. The proposed recordkeeping requirements are designed to help ensure compliance with the rule's requirements and aid in oversight.

3. Consideration Given to Information Technology

The Commission has historically acted to modernize the manner in which information is disclosed to the public and provided to investors in order to keep up with changes in the industry and technology. The proposed amendments would incorporate some modifications to the current notice requirement that are designed to better address the needs of shareholders who have elected electronic delivery and to incorporate additional specificity about the content and delivery of the notice. Further, 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 rule, however, does not require that a fund file the notice to shareholders with the Commission.

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. The information required by rule 35d-1 is not generally duplicated elsewhere.

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.⁵ The current disclosure requirements under, and the proposed

⁵ 5 U.S.C. 601 *et seq.*

amendments to, the rule do not distinguish between small entities and other funds. The burden on smaller funds may be greater than for larger funds. These costs could include expenses for creating or purchasing certain data used in selecting investments consistent with the fund's 80% investment policy, legal and accounting fees, information technology staff, and creating or revising recordkeeping processes. The Commission believes, however, that imposing different requirements on smaller funds would not be consistent with investor protection and the purposes of the disclosure requirements.

6. Consequences of Not Conducting Collection

The notice to shareholders provision of rule 35d-1 provides investors with 60 days prior notice of any change to an investment policy covered by the rule, thereby providing investors with time to decide whether to redeem their shares before the change to the investment policy takes effect. If the disclosure requirement was removed, it would impair investors' ability to redeem shares in advance of a change to an investment policy covered by the rule. The proposed recordkeeping are generally designed to provide Commission staff, and a fund's compliance personnel, the ability to evaluate the fund's compliance with the proposed amendments.

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

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

8. Consultations Outside the Agency

Before adopting the proposed amendments to rule 35d-1, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements. Moreover, 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 information exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry.

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 will be required under this collection of information.

12. Burden of Information Collection

The following estimate of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995⁶ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Providing prior notice to shareholders under rule 35d-1 is not mandatory, even should the Commission adopt the proposed amendments. An investment company may choose to have a name that is not required to adopt an investment policy under the rule. If an investment company does choose such a name, it will only need to provide prior notice to shareholders of a change in its 80% investment policy if it first has adopted a policy to provide notice and then has decided to change this investment policy or, under the proposal, its name accompanying an investment policy change. The proposed

⁶ 44 U.S.C. 3501 *et seq.*

recordkeeping requirements would be mandatory for all funds, though funds not required to adopt an investment policy would have a reduced burden.

TABLE 1: PRA ESTIMATES FOR PROPOSED RULE 35D-1 AMENDMENTS

	Initial hours	Annual hours ¹	Wage rate ²	Internal time costs	Annual external cost burden
CURRENTLY APPROVED BURDENS					
Notice Requirement	0	20 hours ³	\$425 (estimate of wage rate in most recently approved supporting statement)	\$8,500	
Number of Funds		X 38 funds ⁴		X 38 funds	
Current Burden Estimates		760 hours		\$323,000	\$0
PROPOSED BURDENS					
Notice Requirement	0 hours	20 hours ⁵	\$425 (blended rate for attorneys)	\$8,500	\$496 ⁹
Number of Funds		X 34 funds ⁶		X 34 funds	
Total New Burden for Notice Requirement (I)		680 hours		\$289,000	\$16,864
Recordkeeping for Funds with an 80% Policy ⁷	9 hours ⁸	50 hours	\$356 (1:1 blend for compliance attorney and senior programmer)	\$17,800	\$496
Number of Funds		X 10,394 funds		X 10,394 funds	
Total New Burden for Recordkeeping (II)		519,700 hours		\$185,013,200	\$5,155,424
Recordkeeping For Funds Not Required to Adopt 80% Policy	0 hours	1 hour X 3,465 funds ¹⁰	\$425 (blended rate for attorneys)	\$425 X 3,465 funds	\$496
Total New Recordkeeping Burden for Funds Not Required to Adopt 80% Policy (III)		3,465 hours		\$1,472,625	\$1,718,640
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden (I + II + III)		523,845 hours		\$186,774,825	\$6,890,910

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimates for the proposed burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. See Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.
3. The Commission estimates that these notices are typically short, one-page documents that are sent to shareholders with other written materials. The Commission anticipates each respondent would only incur these burden hours once.
4. The currently-approved burden takes into account the Commission's previous estimate, across approximately 13,182 open-end funds and 676 closed-end funds then registered with the Commission, that there are approximately 11,502 funds that have names covered by the rule or 83% of funds covered by the rule (13,858 funds x 83% = 11,502). The Commission estimated that 1% of these funds, or 115 funds, would, within the next three years, provide a notice to shareholders pursuant to rule 35d-1. Therefore, over the course of 3 years, the Commission estimated that, on average approximately 38 funds per year would provide a notice to shareholders under rule 35d-1.
5. Funds are currently required to provide notice to fund shareholders when a fund makes any change to its 80% investment policy. The proposed amendments would make some changes to the current notice requirement, but we do not believe that these proposed

alterations would increase the burden hours needed to prepare the notice.

6. The currently-approved PRA burden for rule 35d-1 was based on the Commission's estimate that 83% of funds were covered by rule 35d-1. We now estimate that 75% of funds will have names subject to the 80% investment policy. The prior PRA burden was based on an estimate using a different analytical approach than we are now employing, based on our most up to date economic analysis. Based on our current analysis, we estimate that 62% of funds are currently subject to rule 35d-1 and that our proposed rule amendments would increase this estimate to 75% of funds. The Commission estimates, across approximately 14,532 open-end and closed-end funds registered with the Commission, that there are approximately 10,394 funds that have names that would be covered by the proposed rule amendments, or 75% of funds covered by the rule amendments (10,223 mutual funds (other than money market funds) + 2,320 non-UIT ETFs + 432 money market funds = 12,975 open end funds + 736 registered closed-end funds + 99 BDCs + 49 UITs = 13,859 funds x 75% = 10,394 funds). The estimate of 49 UITs covered by the rule amendments may be an overestimation, as UITs that have made their initial deposit of securities prior to the effective date of any final rule amendments the Commission adopts would be excepted from the requirements to adopt an 80% investment policy and to provide notices consistent with the rule, unless the UIT has already adopted—or was required to adopt at the time of the initial deposit—an 80% investment policy under the current rule. The Commission estimates that 1% of these 10,394 funds, or 103 funds, would within the next three years provide a notice to shareholders pursuant to the proposed rule amendments. Therefore, over the course of 3 years, the Commission estimates that, on average approximately 34 funds per year would provide a notice to shareholders under the proposed rule amendments.

7. For funds that adopt an 80% investment policy under the proposed rule, the recordkeeping requirements under proposed rule 35d-1(b)(3) would require records documenting the fund's compliance under paragraphs (a) and (b) of proposed rule 35d-1. Written records documenting the fund's compliance include: the fund's record of which assets are invested in the 80% basket and the basis for including each such asset in the fund's 80% basket; the percentage of the value of the fund's assets that are invested in the 80% basket; the reasons for any departures from the fund's 80% investment policy; the dates of any departures from the 80% investment policy; and any notice sent to the fund's shareholders pursuant to proposed rule 35d-1(e). We estimate that these records would generally need to be made daily, but that the vast majority of records would be automated. We understand, however, that some records, specifically, records documenting the reasons for any departures from the 80% investment policy, may not be automated and may require a fund to spend more time to make. Our PRA estimates take these considerations into account.

8. The initial burden for the proposed recordkeeping requirement accounts for the time we estimate that fund will need to establish recordkeeping procedures for the records that must be kept. Once these processes are established, we believe that much of the required recordkeeping, as discussed above, would be largely automated.

9. This estimated burden is based on the estimated wage rate of \$496, for 1 hour of outside legal services. The Commission's estimate of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

10. The Commission estimates across approximately 14,532 open-end and closed-end funds registered with the Commission, that there are approximately 3,465 funds that have names that would be not covered by the proposed rule amendments, or 25% of funds covered by the rule amendments (10,223 mutual funds (other than money market funds) + 2,320 non-UIT ETFs + 432 money market funds = 12,975 open end funds + 736 registered closed-end funds + 99 BDCs + 49 UITs = 13,859 funds x 25% = 3,465 funds).

13. Cost to Respondents

Cost burden is the external cost of services purchased to comply with rule 35d-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 internal hour burden discussed in Item 12 above. Under the proposed amendments, we estimate that a total cost to all respondents of \$6,890,910 as detailed in Table 1 above.

14. Cost to the Federal Government

We expect any burdens to the federal government as a result of the notice to shareholders provision to be minimal and do not expect an increase in staff time or annual operating costs in connection with this collection of information requirements.

15. Change in Burden

The proposed amendments would result in a number of changes to the currently approved burden. The proposed recordkeeping requirements would add an additional 13,859 responses per year and add 51 hours per response. Further, we revised the number of responses to the notice requirement down, from 38 responses annually to 34, based upon an updated assessment that a lower percentage (75%, rather than 83%) of funds have names that would be subject to the rule.⁷

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

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

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.

⁷ See *supra* note 6 to Table 1.