

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 139b**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

As directed by the Fair Access to Investment Research Act of 2017<sup>1</sup> (the “FAIR Act”), the Commission adopted rule 139b under the Securities Act of 1933<sup>2</sup> to extend the safe harbor under rule 139 to a “covered investment fund research report.”<sup>3</sup> Specifically, rule 139b provides a safe harbor to a broker-dealer who publishes or distributes in the regular course of its business research reports concerning one or more “covered investment fund(s)” while participating in the distribution of a covered investment fund’s securities. A broker-dealer may issue an issuer-specific research report or an industry research report so long as the respective conditions for each report are met; however, should a broker-dealer offer performance information in either report, it must comply with the disclosure requirements for standardized performance in rule 139b(a)(3). As a result, rule 139b contains a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>4</sup>

In the Adopting Release, the Commission adopted a provision that rule 139b include a standardize performance requirement. The standardized performance requirement of rule 139b compels broker-dealers issuing research reports that include performance information about open-

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<sup>1</sup> Pub. L. 115-66, 131 Stat. 1196 (2017).

<sup>2</sup> 15 U.S.C. 77a *et seq.*

<sup>3</sup> *See* Covered Investment Fund Research Reports, Securities Act Release No. 10580 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] (“Adopting Release”).

<sup>4</sup> 44 U.S.C. 3501–3521.

end funds to do so in accordance with the requirements set forth in paragraphs (d), (e), and (g) of rule 482.<sup>5</sup> Rule 139b<sup>6</sup> also requires that research reports that include performance information about closed-end funds present it in accordance with the instructions to item 4.1(g) of Form N-2<sup>7</sup> under the Investment Company Act of 1940 (“Investment Company Act”).<sup>8</sup> Performance measures calculated by broker-dealers are not required to be kept confidential and there is no mandatory retention period.

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

As noted above, investors tend to consider fund performance a significant factor in evaluating or comparing investment companies. Standardized performance also aids in addressing potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature.

Rule 139b compels broker-dealers issuing research reports that include performance information about open-end funds to do so in accordance with the requirements set forth in paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports that include performance information about closed-end funds present it in accordance with the instructions to item 4.1(g) of Form N-2 under the Investment Company Act. Thus, the standardized performance requirement of rule 139b is a “collection of information” requirement within the meaning of the PRA, and the Commission is submitting the collection of information to the Office of

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<sup>5</sup> See 17 CFR 230.139b(a)(3) and 17 CFR 230.482.

<sup>6</sup> See 17 CFR 230.139b(a)(3).

<sup>7</sup> 17 CFR §239.14 and 17 CFR 274.11a-1.

<sup>8</sup> 15 U.S.C. 80a-1 *et seq.*

Management and Budget (“OMB”) for review in accordance with 44 U.S. C. 3507(d) and 5 CFR 1320.11. The rule requires that a broker or dealer that publishes or distributes a research report under rule 139b and offers performance information in that report, must also provide alongside that standardized performance information as required by rule 139b(a)(3).

As noted above, rule 139b contains a “collection of information” requirements within the meaning of the PRA. The title for the collection of information is:

- “Rule 139b Disclosure of Standardized Performance.”

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

The collection of information requirements under the rule 139b will not be provided to the Commission, either electronically or otherwise.

### **4. Duplication**

Rule 139b duplicates many of the provisions of rule 139 with modifications to accommodate covered investment funds. As directed by the FAIR Act, the Commission adopted rule 139b in order to extend the rule 139 safe harbor for broker-dealers publishing or distributing research reports when participating in the offering of an issuer’s securities to covered investment funds. The duplication of rule 139 is, therefore, consistent with Congressional directive.

Furthermore, rule 139b incorporates performance standards from other rules. As discussed above, rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form

N-2. These overlapping performance standards are intended to promote the Commission's goal of minimizing investor confusion related to whether a publication is a research report or an investment company advertisement or selling material.

The Commission believes that there are no other federal rules duplicating, overlapping, or conflicting with rule 139b.

#### **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 performance standards for research reports do not distinguish between small broker-dealers and other broker-dealers. To the extent smaller broker-dealers publish or distribute research reports, their burden to prepare research reports may be greater than for larger broker-dealers due to economies of scale. This burden will include the cost of reviewing a research report to confirm that it meets the requirements of rule 139b.

The Commission considered special requirements for small entities. The Commission believes, however, that imposing different requirements on smaller broker-dealers will not be consistent with investor protection and the purposes of the rule's conditions. The use of different standards for small entities may create a risk that investors may receive false or misleading information.

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

Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b

also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N-2. Standardized performance helps reduce potential investor confusion between research reports and investment company advertisements or selling materials.

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

Not applicable.

**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 information exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry. The Commission requested public comment on the information collection requirements in rule 139b before it submitted this request for approval to OMB. The Commission received no comments in response to its request.

**9. Payment or Gift**

Not applicable.

**10. Confidentiality**

Not applicable.

**11. Sensitive Questions**

No PII collected/not applicable.

## 12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the PRA and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms. Rule 139b(a)(3) requires that covered investment fund research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b(a)(3) also requires that covered investment fund research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N-2. The standardized performance requirement is mandatory only if a broker-dealer provides performance information in their covered investment fund research report. Performance information provided in a covered investment fund research report will not be kept confidential.

For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b-1 communications currently filed by broker-dealers with FINRA (approximately 48,341) could be considered as rule 139b covered investment fund research reports.<sup>9</sup> We estimate that broker-dealers will publish annually 4,834 (10% of 48,341) covered investment fund research reports. Moreover, we assume for purposes of the PRA that all estimated rule 139b research reports will include fund performance information. We further estimate that for the year ended December 31, 2021, 1,169 broker-dealers would likely be respondents to the collection of information with a frequency of 4.1 responses for the year.<sup>10</sup> Additionally, we estimate that each

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<sup>9</sup> Based on data provided by FINRA, for the period January 1, 2021 through December 31, 2021, there were an aggregate of 48,340 filings received by FINRA that were coded either as Rule 482 or Rule 34b-1 filings.

<sup>10</sup>  $4,834 \text{ covered investment fund research reports} / 1,169 \text{ broker-dealers} = 4.1 \text{ annual responses per broker-dealer.}$

research report will require 3 hours of ongoing internal burden hours by a broker-dealers' personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be 12.3 internal burden hours.<sup>11</sup> Accordingly, we estimate that the standardized performance presentation requirements will result in an average annual hour burden of about 12.3 hours per broker-dealer.

In sum, we estimate that rule 139b's requirements will impose a total annual internal hour burden of 14,379 hours on broker-dealers.<sup>12</sup> We do not think there is an external cost burden associated with this collection of information.

Based on a Commission estimate of 14,379 hours and an estimated wage rate of approximately \$243.25 per hour,<sup>13</sup> the total cost of the hour burden for complying with the standardized performance requirements of rule 139b is \$3,497,692.<sup>14</sup>

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<sup>11</sup> 4.1 annual responses per broker-dealer x 3 internal burden hours = 12.3 annual internal burden hours per broker-dealer. In the Adopting Release, the Commission estimated that the initial implementation of rule 139b would impose additional burden hours upon broker-dealers for a period of three years. As of the date of this Supporting Statement, such three year phase-in period has expired and the calculations herein are based upon the original on-going estimate of 3 hours \* 4.1 responses.

<sup>12</sup> 12.3 burden hours \* 1,169 broker-dealers.

<sup>13</sup> The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*, and modified by the Commission staff in 2022 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. The estimated wage rate of \$243.25 is a weighted average based on the estimate that a junior business analyst would handle 75% of the hours spent at an hourly rate of \$191 and a compliance attorney would handle the remaining 25% of the hours spent at an hourly rate of \$400.  $(\$191 \times 0.75) + (\$400 \times 0.25) = \$243.25$ .

<sup>14</sup>  $\$243.25 \times 14,379 = \$3,497,692$ .

**Table 1: Summary of Annual Responses, Burden Hours, and Burden Hour Costs Estimates for the Disclosure Requirement under Rule 139b.**

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>
IC Responses	6,500	4,834	-1,666	20,731	14,379	-6,352	\$4,451,982	\$3,497,692	-\$954,290

**13. Cost to Respondents**

Compliance with the conditions of rule 139b will not require any investment in capital equipment or outside services. As noted above, we do not believe there to be an external cost burden.

**14. Cost to the Federal Government**

There is no cost associated with rule 139b.

**15. Changes in Burden**

The total annual hour burden is 14,379 hours. The decrease in burden hours over the previous burden estimate of 20,731 is due to: (i) the decrease in Rule 139b filings; (ii) a decrease in the number of estimated broker-dealer respondents; and (iii) the cessation of the initial three year compliance period and its corresponding affects upon the previous internal burden hours. Additionally, we do not believe there to be an external cost burden associated with rule 139b.

**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.