

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 September 20, 2023, the Commission adopted rule and form amendments that were designed to modernize and enhance the protections that rule 35d-1 provides (the “amendments”).⁴ Among other things, the amendments expanded the 80% investment policy to apply to any fund name with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics. Also, the amendments require a fund to report the value of the fund’s 80% basket and whether an investment is included in the fund’s 80% basket as well as a new reporting item to include the definition(s) of terms used in the fund’s name. The amendments require funds that adopt an 80% investment policy to maintain written records documenting their compliance with rule 35d-1, including records of any notice sent to the fund’s shareholders pursuant to the rule.

The amendments also update the rule’s existing notice requirement to expressly address funds that use electronic delivery methods to provide information to their shareholders. The amendments 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 the investment policy change.

⁴ Investment Company Names, Investment Company Act Release No. 35000 (Sept. 20, 2023) (the “2023 Adopting Release”).

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 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 amendments' 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 amendments' 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 amendments incorporate certain modifications to the current notice requirement to expressly address funds that use electronic delivery methods to provide information to their shareholders.

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 disclosure requirements under the amended 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 rule's 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

⁵ 5 U.S.C. 601 *et seq.*

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 recordkeeping requirements are generally designed to provide Commission staff as well as the fund's compliance personnel, the ability to evaluate the fund's compliance with the rule.

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 amendments to rule 35d-1, the Commission solicited and evaluated public comments on the proposal and its collection of information requirements. Specifically, the public was given the opportunity to comment on the Commission's estimates for the burdens associated with rule 35d-1, as proposed and as compared to the existing approved burden inventory in the proposing release for the amendments. The Commission's solicitation of public comments included estimating and requesting public comments on the burden estimates for all information collections under this OMB control number (*i.e.*, both changes associated with the rulemaking and other burden updates). The Commission received one comment on rule 35d-1's proposed burdens estimates suggesting that the Commission had underestimated costs; other comments that did not specifically address the proposed burden analysis also suggested that the Commission had underestimated the costs associated with the proposed notice and recordkeeping requirements.⁶ These comments were considered by the Commission as discussed in the 2023 Adopting Release, and the Commission adjusted the estimated

⁶ See 2023 Adopting Release at section V.B.

annual burden hours and total time costs in consideration of those comments and to reflect changes from the proposal. In addition, 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. Assurance of 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 1995⁷ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. The collection of information requirements include, as detailed in Table 1 below, the notice requirement and recordkeeping requirements for funds that are required

⁷ 44 U.S.C. 3501 *et seq.*

to adopt an 80% investment policy. Compliance with these requirements is mandatory.

Responses to these requirements will not be kept confidential.

The table below summarizes the Commission’s estimates associated with the amendments to the notice and recordkeeping requirements to rule 35d-1 that the 2023 Adopting Release addresses:

TABLE 1: PRA ESTIMATES FOR 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
ESTIMATED BURDENS					
Notice Requirement	0 hours	20 hours ⁵	\$425 (blended rate for attorneys)	\$8,500	\$565 ⁹
Number of Funds		X 34 funds ⁶		X 34 funds	
Total New Burden for Notice Requirement (I)		680 hours		\$289,000	\$19,210
Recordkeeping for Funds with an 80% Policy ⁷	9 hours ⁸	75 hours	\$406 (1:1 blend for compliance attorney and senior programmer)	\$30,450	\$565
Number of Funds		X 10,291 funds		X 10,291 funds	
Total New Burden for Recordkeeping (II)		771,825 hours		\$313,360,950	\$5,814,415
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden (I + II)		772,505 hours		\$313,649,950	\$5,833,625

Notes:

- Includes initial burden estimates annualized over a 3-year period.
- 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.
- 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.
- 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. The amendments make some changes to the current notice requirement, including requiring funds to provide additional specificity about the content and delivery of notice. Because funds already have in place systems required to provide notice to shareholders, the Commission believes that these alterations would not increase the burden hours needed to prepare the notice. Although the amendments would permit unlisted registered closed-end funds and business development companies to make changes to their 80% investment policies without a shareholder vote under certain circumstances, including that a fund provide certain notice to shareholders, we have not increased our estimates as a result of this provision. The costs associated with providing notice under this exception are comparable to the costs that a fund would incur by providing notices associated with the shareholder vote that would otherwise be required for a closed-end fund/business development company to change its 80% investment policy under the amendments.

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. The Commission now estimates, pursuant to its current economic analysis, that 60% of funds are currently subject to the 80% investment policy requirement, and that 76% of funds would be subject to this requirement under the amendments. The Commission estimates, across approximately 13,541 open-end and closed-end funds registered with the Commission, that there are approximately 10,291 funds that have names that would be covered by the amendments, or 76% of funds covered by the amendments (9,533 mutual funds (other than money market funds) + 2,735 non-UIT ETFs + 355 money market funds = 12,975 open-end funds + 748 registered closed-end funds + 125 BDCs + 45 UITs = 13,541 funds x 76% = 10,291 funds). The Commission estimates that 1% of these 10,291 funds, or 103 funds, would within the next three years provide a notice to shareholders pursuant to the 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 amendments.

7. For funds that adopt an 80% investment policy under the rule amendments, the recordkeeping requirements under rule 35d-1(b)(3) would require records documenting the fund's compliance under paragraphs (a) and (b) of 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 (including why the fund determined that circumstances are other-than-normal); the dates of any departures from the 80% investment policy; and any notice sent to the fund's shareholders pursuant to rule 35d-1(e).

8. This estimated initial burden for the recordkeeping requirement accounts for the time the Commission estimates that fund will need to establish recordkeeping procedures for the records that must be kept.

9. This estimate is based on the estimated wage rate of \$565, 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.

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 amendments, we estimate that a total cost to all respondents of \$5,833,625 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 amendments would result in a number of changes to the currently approved burden. The new recordkeeping requirements for funds that adopt an 80% policy would add an additional hour burden of 75 hours per year for 10,291 funds, or 771,825 hours annually. While we estimate that the per-response hour burden associated with the notice requirement would not change from the currently-approved per-response hour burden, we have revised the number of responses to the notice requirement down from 38 responses annually to 34 responses, based upon an updated assessment that a lower percentage (76%, rather than 83%) of funds have names that would be subject to the rule.⁸ The Commission estimates that there would be an external cost burden associated with rule 35d-1's notice and recordkeeping requirements of \$5,833,625 (an increase from the currently-approved estimate of \$0). These changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all information collection burden estimates for this OMB control number.

16. Information Collection Planned for Statistical Purposes

Not applicable.

⁸ See *supra* note 6 to Table 1.

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.