

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 34b-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 34(b) of the Investment Company Act of 1940 (“Investment Company Act”) makes it unlawful for any person to make an untrue statement of a material fact in any documents filed or transmitted pursuant to the Investment Company Act or to omit a statement necessary to prevent such documents from being materially misleading.

Rule 34b-1 under the Investment Company Act governs sales material that accompanies or follows the delivery of a statutory prospectus (“sales literature”).¹ Rule 34b-1 deems to be materially misleading any investment company (“fund”) sales literature required to be filed with the Securities and Exchange Commission (“Commission”) by Section 24(b) of the Investment Company Act² that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act (“rule 482”). Additionally, rule 34b-1 deems to be materially misleading any fund sales literature intended for distribution to prospective

¹ A “statutory prospectus” is a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933 (“Securities Act”).

² Section 24(b) of the Investment Company Act applies to the sales literature of any registered open-end company, any registered unit investment trust, and any registered face-amount certificate company. *See* 15 U.S.C. 80a-24(b). Sales literature addressed to or intended for distribution to prospective investors is deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with a national securities association registered under Section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. *See* rule 24b-3 under the Investment Company Act.

investors that includes fee and expense information, unless that sales literature complies with the disclosure and timeliness requirements of rule 482.³

2. Purpose and Use of the Information Collection

Rule 34b-1 is designed to prevent misleading performance claims in fund sales literature and to enable investors to make meaningful comparisons among funds.

3. Consideration Given to Information Technology

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 vast majority of fund sales literature is filed with the Financial Industry Regulatory Authority ("FINRA") under Investment Company Act rule 24b-3, which allows any sales material filed with FINRA to be deemed to be filed with the Commission. Rule 34b-1 sales literature that is required to be filed with the Commission is to be filed electronically on EDGAR (17 CFR 232.101(a)(1)(i) and (iv)). The public may access filings on EDGAR through the Commission's website (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

³ These provisions of rule 34b-1 apply to any registered investment company or business development company advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering. *See* rule 34b-1(c).

4. Duplication

The Commission periodically evaluates reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or form or a change in a rule or form.

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 disclosure requirements for rule 34b-1 sales literature do not distinguish between small entities and other funds. Although the burden on small funds may be greater than those of larger ones, the Commission believes that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of the rule 34b-1 requirements.

6. Consequences of Not Conducting Collection

Since use of sales literature by funds is voluntary, the Commission does not determine the frequency with which funds prepare and file sales literature. Therefore, short of not requiring any collection for sales literature governed by rule 34b-1, the Commission cannot require less frequent collection. Not requiring disclosure of the information required by rule 34b-1 would harm investors by denying them information that may be useful in making investment decisions. If such sales literature did not contain this information, investors could receive inadequate information or could receive confusing, false, or misleading information. As a result, investor confidence in the securities industry could be adversely affected.

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

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

8. Consultation Outside the Agency

The Commission and the Division of Investment Management 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 ascertaining and acting upon paperwork burdens that may confront 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, 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. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on March 22, 2023, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

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 1995 (“PRA”)⁴ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with rule 34b-1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

The table below summarizes our estimates associated with rule 34b-1:

IC	IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			Burden Cost Burden (\$)		
		Previously approved	Requested	Change	Previously approved	Requested	Change	Previously approved	Requested	Change
	Rule 34b-1									
IC1	Recordkeeping	8,227	8,289	+ 62	118,368 ⁵	91,179	-27,189	0	0	0
Total for all ICs		8,227	8,289	+ 62	118,368	91,179	-27,189	0	0	0

The Commission estimates that on average approximately 8,289⁶ responses that include information required by rule 34b-1 are filed each year. The burden resulting from the collection of information requirements of rule 34b-1 is estimated to be 11 hours per response.⁷ The total hourly burden for rule 34b-1 is approximately 91,179 hours per year

⁴ 44 U.S.C. 3501 *et seq.*

⁵ The previously approved amount of 118,268 hours aggregated: (i) 46,278 burden hours associated with rule 34b-1’s provisions prior to the October 2022 amendments; and (ii) an additional 72,000 burden hours attributable to initial burdens associated with implementing the new disclosure requirements under rule 34b-1 under the 2022 amendments, along with ongoing costs associated with those requirements.

⁶ The estimated average number of responses to rule 34b-1 for the two-year period from October 1, 2021, to November 30, 2023, comprises 7,912 filings submitted to FINRA and 377 filings submitted to the Commission.

⁷ Previous PRA extensions for rule 34b-1 assumed an estimated ongoing annual burden of 6 hours per response in complying with paragraphs a and b of rule 34b-1, 3 hours per response in complying with the fee and expense figure disclosure requirements of paragraph c, and 2 hours for the fee waivers/expense reimbursement arrangements disclosure requirements of paragraph c, while estimating that only 96% of relevant responses would need to comply with all of the paragraph c requirements. For purposes of this extension, we are assuming that 100% of the responsive filings identified will incur burdens for all the rule’s requirements, resulting in a total of 11 hours per response per year (6+3+2= 11). We recognize that this might overstate the total burden.

in the aggregate.⁸

Based on a Commission estimate of approximately 91,179 hours and an estimated blended wage rate of \$335 per hour,⁹ the total annual hour burden for complying with the requirements of rule 34b-1 is approximately \$30,544,965.¹⁰

13. Cost to Respondents

Cost burden is the cost of services purchased to comply with rule 34b-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 hour burden discussed in Item 12 above. Estimates are based on the Commission's experience with advertisements and sales literature. The Commission currently attributes no external cost burden to rule 34b-1.

14. Cost to the Federal Government

The annual cost of reviewing and processing disclosure documents, including new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies amounted to approximately \$29 million in fiscal year 2022, based on the Commission's computation of the value of staff time devoted to this activity and related overhead. However, the vast majority of the responses that are required to be filed under Section 24(b) of the Investment Company Act are in practice

⁸ 8,289 responses x 11 hours per response = 91,179 hours.

⁹ The industry burden is calculated by multiplying the total annual burden to comply with rule 34b-1 by the estimated blended rate of \$335 (compliance attorney at \$425 per hour and senior programmer at \$386 per hour, senior compliance examiner at \$276 per hour, and paralegal at \$253 per hour). The estimated blended wage figure is based on the published rates for a compliance attorney, senior programmer, senior compliance examiner, and paralegal from the Securities Industry and Financial Markets Report on Management & Professional Earnings in the Securities Industry 2013, modified by the Commission in 2023 to account for a 1,800 hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

¹⁰ 91,179 hours x \$335 per hour = \$30,544,965.

filed with FINRA and deemed filed with the Commission pursuant to rule 24b-3.¹¹ As a result, the estimated cost to the federal government related to rule 34b-1 responses is estimated to be negligible.

15. Change in Burden

As summarized above, the estimated annual hourly burden associated with rule 34b-1 has decreased from 118,368 hours to 91,179 hours (a decrease of 27,189 hours). The decrease in burden hours for complying with rule 34b-1 reflects that the previous estimate assumed entities would incur higher initial costs in implementing the 2022 amendments to rule 34b-1, and lower ongoing compliance costs after that implementation.¹² There is no annual external cost burden attributed to rule 34b-1.

16. Information Collection Planned for Statistical Purposes

The results of any information collection will not be published.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit 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.

¹¹ See *supra* note 2.

¹² That estimate assumed that affected entities would spend an initial 9 hours implementing rule 34b-1(c)'s fee and expense disclosures, and an initial 6 hours implementing 34b-1(c)'s fee waiver and expense reimbursement requirements.