

## SUPPORTING STATEMENT

### For the Paperwork Reduction Act Information Collection Submission for Rule 38a-1

#### A. JUSTIFICATION

##### 1. Necessity for the Information Collection

Rule 38a-1 under the Investment Company Act of 1940 (“Investment Company Act”)<sup>1</sup> is intended to protect investors by fostering better fund compliance with securities laws.<sup>2</sup> The rule requires every registered investment company and business development company (“fund”) to: (i) adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the fund, including procedures for oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund; (ii) obtain the fund board of directors’ approval of those policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund; (iii) annually review the adequacy of those policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation; (iv) designate a chief compliance officer to administer the fund’s policies and procedures and prepare an annual report to the board that addresses certain specified items relating to the policies and procedures; and (v) maintain for five years the compliance policies and procedures and the chief compliance officer’s annual report to the board.

---

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

<sup>2</sup> 17 CFR 270.38a-1.

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

The purpose of the information collection requirements in rule 38a-1 is to ensure that funds maintain comprehensive, written internal compliance programs that promote compliance with the federal securities laws. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' compliance programs.

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

Rule 38a-1 does not require the reporting of any information or the filing of any documents with the Commission. Rule 38a-1 does require funds to maintain written policies and procedures. Each fund also is required to maintain for at least five years a copy of the annual compliance report provided to the fund's board of directors. The Electronic Signatures in Global and National Commerce Act<sup>3</sup> and the conforming amendments to rules under the Investment Company Act permit funds to maintain records electronically.

## **4. Duplication**

Rule 38a-1 imposes a broad requirement that funds have in place written compliance policies and procedures. Funds also are subject to certain requirements elsewhere in the federal securities laws that require them to maintain written policies and procedures. The staff believes, however, that any duplication of recordkeeping requirements is limited. Moreover, rule 38a-1 does not require funds to maintain duplicate copies of records covered by these more targeted requirements, and a firm's compliance policies and procedures are not required to be maintained in a single location. The staff believes, therefore, that any duplication of regulatory requirements does not impose significant additional costs on funds. The Commission periodically evaluates

---

<sup>3</sup> P.L. 106-229, 114 Stat. 464 (June 30, 2000).

rule-based recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule.

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

Funds, regardless of their size, are subject to the requirements of rule 38a-1. Effective internal compliance programs are essential for firms of all sizes. Rule 38a-1 affords funds the flexibility to tailor their compliance program to the nature of their business. Small firms, which generally have less complex and more limited operations, likely need less extensive compliance programs than their larger counterparts. Thus, rule 38a-1 does not inappropriately burden small entities. The Commission believes that it could not adjust the rule to lessen the burden on small entities of complying with the rule without jeopardizing the interests of investors in small funds. 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.

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

Less frequent information collection would be incompatible with the objectives of rule 38a-1. The annual reviews required under rule 38a-1 are integral to detecting and correcting any gaps in the program before irrevocable or widespread harm is inflicted upon investors, and extending the time between reviews increases the likelihood that such harm could go unchecked.

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

Rule 38a-1 requires funds and advisers to maintain their internal compliance policies and procedures and documents related to the annual review of those policies and procedures for at least five years. Although this period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2)(iv), the staff believes that this is warranted because the rule

contributes to the effectiveness of the Commission's examination and inspection program. Because the period between examinations may be as long as five years, it is important that the Commission have access to records that cover the entire period between examinations.

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

The Commission requested public comment on the collection of information requirements in rule 38a-1 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request. 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 informal exchanges. These forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

#### **9. Payment or Gift**

No payment or gift to respondents was provided.

#### **10. Confidentiality**

If information collected pursuant to rule 38a-1 is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

#### **11. Sensitive Questions**

No information of a sensitive nature is required under this collection of information. The information collection does not collect personally identifiable information (PII).

## **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 and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules. In our most recent Paperwork Reduction Act submission for rule 38a-1, we estimated for rule 38a-1 a total hour burden of 451,408 hours, at a time cost of \$304,384,500, and external burden costs of \$19,608,000. Compliance with rule 38a-1 is mandatory for funds.

Table 1 below summarizes our current PRA estimates.

**TABLE 1: RULE 38A-1 PRA ESTIMATES**

	Internal annual burden hours	Wage rate <sup>1</sup>	Internal time costs	Annual external cost burden
Policies and procedures requirements	25 hours	\$546  (blended rate for compliance attorney, assistant general counsel, and Chief Compliance Officer)	\$23,850	\$1,752 <sup>2</sup>
	5 hours	\$4,770 (Board of Directors as a whole) <sup>3</sup>		
Recordkeeping requirements	5 hours	\$420  (blended rate for compliance attorney and senior programmer)	\$2,100	\$0
Total annual burden per fund	35 hours		\$39,600	\$1,752
Number of affected funds	× 13,628		× 13,628	× 13,628
<b>Total annual burden</b>	<b>476,980 hours</b>		<b>\$539,668,800</b>	<b>\$23,876,256</b>

**Notes:**

1. The Commission's estimates of the relevant wage rates are based on the salary information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff for 2024 ("SIFMA Wage Report.") The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. The \$501 wage rate reflects current estimates from the SIFMA Wage Report of the blended hourly rate for a compliance attorney (\$440), an assistant general counsel (\$561), and Chief Compliance Officer (\$638).  $(\$440 + \$561 + \$638) / 3 = \$546$ . The \$420 wage rate reflects current estimates from the SIFMA Wage Report of the blended hourly rate for a compliance attorney (\$440) and a senior programmer (\$399).  $(\$440 + \$399) / 2 = \$420$ .
2. This estimated burden is based on the estimated wage rate of \$584/hour, for 3 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
3. This wage rate is not from the SIFMA Wage Report but is a staff estimate. It is a combined cost for the entire board (not a per board member cost). This estimate assumes an average of 9 board members per board.

**13. Cost to Respondents**

Cost burden is the cost of goods and services purchased to comply with rule 38a-1, such as legal and accounting services. The cost burden does not include the hour burden discussed in Item 12 above. As outlined in the table above, we estimate the total external cost burden to comply with rule 38a-1 to be \$23,876,256.

**14. Cost to the Federal Government**

Rule 38a-1 does not impose a cost on the federal government. Rule 38a-1 does not require funds to file any documents with the Commission. However, the Commission staff may records produced pursuant to the rule in order to assist the Commission in carrying out its examination and oversight program.

**15. Change in Burden**

The estimated total annual burden hours has increased as follows.

**Table 1: Summary of Revised Annual Responses, Burden Hours, and Cost Estimates**

IC Title	Annual Time Burden (Hrs.)			External Cost to Respondents (\$)		
	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
Rule 38a-1	451,408	476,980	25,572	\$19,608,000	\$23,876,256	\$4,268,256

We have revised the estimates to reflect changes in the number of affected entities and in the external cost associated with the information collection requirements. These changes reflect revised estimates and burdens attributable to requirements under the rule.

**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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.