



U.S. Securities and Exchange Commission

PAPERWORK REDUCTION ACT SUPPORTING STATEMENT

for the extension of
Rule 17d-1

OMB Control Number 3235-0562

The U.S. Securities and Exchange Commission (“Commission” or SEC) submits this information collection request (ICR) pursuant to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Section 3501 et seq., with the following justification.

1. Necessity of Information Collection

Section 17(d) of the Investment Company Act of 1940 (the “Act”) (15 U.S.C. 80a-17(d)) makes it unlawful for an affiliated person of or a principal underwriter for a registered investment company (“fund”), or any affiliated person of such a person or principal underwriter, acting as principal, to effect any transaction in which the fund is a joint or a joint and several participant, in contravention of Commission rules.¹ Pursuant to this provision, the Commission adopted rule 17d-1 (17 CFR 270.17d-1) in 1946 and has subsequently amended the rule on numerous occasions.² The rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d-1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule’s prohibition on joint transactions or arrangements involving first- or second-tier affiliates. Second, rule 17d-1 permits a portfolio affiliate to enter into a joint

1 Affiliated persons of a fund include (i) its investment adviser and any subadvisers, (ii) companies the fund controls or five percent (or more) of whose securities are held by the fund, (iii) persons who control the fund, and (iv) persons who are under common control with the fund. 15 U.S.C. 80a-2(a)(3).

2 In 1957, the rule was adopted to prohibit a broad range of joint transactions. *See Applications Regarding Joint Enterprises and Certain Profit-Sharing Plans*, Investment Company Act Release No. 2472 (Jan. 10, 1957).

transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d-1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Commission approval of joint enterprises or arrangements. Rule 17d-1 prohibits an affiliated person of or principal underwriter for any fund (a "first-tier affiliate"), or any affiliated person of such person or underwriter (a "second-tier affiliate"), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement "an application regarding [the transaction] has been filed with the Commission and has been granted by an order."³ In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.⁴

Exceptions to the Commission approval process. Rule 17d-1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates.⁵ For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements

3 17 CFR 270.17d-1(a).

4 17 CFR 270.17d-1(b).

5 17 CFR 270.17d-1(d).

regarding liability insurance policies and certain transactions with “portfolio affiliates” (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (e.g., the fund’s adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a “financial interest” in a party to the transaction. The rule excludes from the definition of “financial interest” any interest that the fund’s board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in its meeting minutes.⁶

2. Purpose and Use of Information Collection

The requirements of rule 17d-1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds’ shareholders. As discussed above, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d-1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule’s prohibition on joint transactions or arrangements involving first- or second-tier affiliates. This filing requirement assures that Commission staff can review the proposed joint transaction or arrangement for compliance with the Act’s restrictions on affiliated transactions. These restrictions were enacted in 1940 in response to a wide array of abuses that occurred in the 1920s and 1930s. The breadth of some of the Act’s provisions, including the restrictions in section 17(d) and rule 17d-1 on joint transactions or arrangements, however, prohibit some transactions that do not involve the concerns the provisions are intended to address, and the

⁶ 17 CFR 270.17d-1(d)(5)(ii)(A)(8).

process of applying for exemptive relief enables the Commission to narrow the prohibitions on affiliated transactions in certain areas where the Act's prohibitions can be relaxed without reducing the protection of funds and their shareholders. Without the Commission's application process under rule 17d-1, it would be difficult for the Commission to provide this flexibility.

Second, rule 17d-1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in its meeting minutes. This recordkeeping requirement provides fund boards of directors with the flexibility to authorize joint transactions with remote affiliates, rather than requiring that such transactions be reviewed by the Commission. The records maintained pursuant to this provision of rule 17d-1 are not submitted to the Commission but the collection of information is necessary to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a finding by a fund's board of directors that the financial interest of a prohibited participant in a party to a transaction with a portfolio affiliate is not material.

3. Use and Consideration Given to Information Technology

The Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system automates the filing, processing, and dissemination of full disclosure filings. This automation has increased the speed, accuracy, and public availability of information, generating benefits to investors and financial markets. Funds are required to submit applications under rule 17d-1 electronically using the EDGAR system.⁷

⁷ Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E, Investment Company Act Release No. 28476 (Oct. 29, 2008) [73 FR 65516 (Nov. 4, 2008)].

The public may access filings on EDGAR through the Commission’s Internet website (<http://www.sec.gov>). The Electronic Signatures in Global and National Commerce Act⁸ and the conforming amendments to recordkeeping rules under the Investment Company Act permit funds to maintain records electronically.

4. Identifying and Minimizing Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes a rule or form, or a change in either. The records described in rule 17d-1 may include some of the same records required by rules 31a-1 and 31a-2 under the Investment Company Act; however funds would not be required to retain duplicate records.

5. Effect on Small Entities

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act,⁹ to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. Rule 17d-1 applies to any transaction involving small entities, if the fund participating in the transactions complies with the conditions set forth in the rules. These requirements protect the interests of the funds and their shareholders from overreaching by fund affiliates. The rule does not disproportionately 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 the small entities.

8 P.L. 106-229, 114 Stat. 464 (June 30, 2000).

9 5 U.S.C. 601 *et seq.*

6. Consequences of Not Conducting Collection and Obstacles to Reducing Burden

The information collection requirements in rule 17d-1 arise when a fund applies for an exemptive order or a prohibited participant may have a financial interest in a party to a joint transaction involving a fund and a portfolio affiliate of the fund. The rule's filing requirements are designed to provide the Commission with the information needed to determine whether an exemptive order under section 17(d) and rule 17d-1 is warranted. Less frequent information collection may impede the applications process as well as the Commission's inspection staff's ability to monitor the board's oversight of otherwise prohibited joint transactions and would not be consistent with protecting fund shareholders from overreaching by fund affiliates.

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

The rule's required filings with the Commission and recordkeeping requirements may require certain information to be provided to the Commission or recorded more often than quarterly, depending on the circumstances of a particular fund's proposed joint transactions or arrangements with affiliates within a given quarter. The Commission believes, however, that such circumstances are highly unlikely. The records required under rule 17d-1 also must be kept pursuant to rule 31a-1 of the Act. Rule 31a-2 of the Act addresses the record retention requirements for rule 31a-1 records, and the PRA justification for that rule explains the need for record retention in excess of three years.

8. Public Comment Consultations Outside the Agency

The SEC did not receive public comment during the 60-day notice and comment period.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality and Privacy

Not applicable.

11. Collection Questions of a Sensitive Nature

Not applicable.

12. Estimated Time Burden and its Cost Equivalent

Commission approval of joint transactions. Applicants seeking exemptive relief under section 17(d) and rule 17d-1 must file an application with the Commission setting forth a basis for the relief requested (including a detailed justification for removal of any statutory protections), and identifying any benefits expected for investors and any conditions imposed to protect investors. Applications are reviewed in the order received, unless the applicant makes a compelling demonstration that the application could not have been filed in time to allow it to be addressed and acted upon in due course. During the review process, the staff may send comment letters to the applicant requesting clarifications or modifications to the application to assure that the requested relief is consistent with statutory standards. Once review of an application is completed, a notice outlining the requested relief is published in the Federal Register to give interested persons an opportunity to request that the matter be set down for a hearing. After a notice of approximately 25 days, and unless a hearing is requested by an interested party or is ordered by the Commission on its own motion, an order is issued granting the requested relief.

The following estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act of 1995.¹⁰ The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Responses to the collection of

¹⁰ 44 U.S.C. 3501 *et seq.*

information on EDGAR will not be kept confidential. However, information provided to the Commission in connection with staff examinations or investigations is kept confidential subject to the provisions of applicable law. If information collected pursuant to rule 17d-1 is reviewed by the Commission's examination staff, it is accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

Depending on a fund's circumstances and the novelty or complexity of the proposed affiliated joint transaction or arrangement, the burden hours associated with complying with these requirements may vary widely. In our most recent Paperwork Reduction Act submission for rule 17d-1, Commission staff estimated the annual compliance burden to comply with the collection of information requirement was 5,325 burden hours with an external cost burden of \$4,146,400.

The tables below summarize our PRA annual burden estimates associated with rule 17d-1. The following estimates of average burden hours and costs are made for purposes of the Paperwork Reduction Act.

	Internal annual burden hours	Wage rate ¹¹	Internal time cost	Annual external cost burden
Rule 17d-1 exemptive application	75 hours	\$498 ¹²	\$37,350	\$58,400 ¹³
Number of exemption requests	× 71 ¹⁴		× 71	× 71
Total new aggregate annual burden	5,325 hours		\$2,651,850	\$4,146,400

Exceptions to the Commission approval process. We estimate that funds currently do not rely on the exemption from the term “financial interest” with respect to any interest that the fund’s board of directors finds to be not material. Accordingly, we estimate that annually there will be no joint transactions under rule 17d-1 that will result in this aspect of the collection of information requirements of rule 17d-1.

13. Estimated Additional Cost Burden

Cost burden is the cost of goods and services purchased for compliance with rule 17d-1, such as for the services of outside counsel. The cost burden does not include the hour burden discussed in Item 12 above. Estimates are based on the Commission’s experience. This cost estimate is made solely for purposes of the Paperwork Reduction Act. The estimate is not

11 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 (“SIFMA Wage Report”). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

12 This blended rate is based on the following: \$652 (hourly rate for a chief compliance officer); \$573 (hourly rate for an assistant general counsel); and \$268 (hourly rate for a paralegal).

13 This estimated burden is based on the estimated wage rate of \$584/hour, for 100 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.

14 In the past three years, the Commission estimates that it has received approximately 214 applications for exemptive relief under section 17(d) and rule 17d-1. 214 applications ÷ 3 years = 71 applications per year.

derived from a comprehensive or even a representative survey or study of the costs of Commission rules. As stated in Item 12 above, the staff estimates that on average funds spend \$58,400 for outside legal services in connection with seeking Commission approval of affiliated joint transactions. Thus, the staff estimates that the total annual external cost burden imposed by the exemptive application requirements of rule 17d-1 is \$4,146,400.

14. Annual Cost to the Federal Government

The SEC is in the process of revising its methodologies to estimate annualized costs to the Federal government for all its relevant collections of information. The SEC anticipates that future extensions of this collection of information will reflect the revised methodologies.

15. Reasons for Changes in Burden Estimates

The estimated hourly burden and external cost associated with rule 17d-1 has changed as follows:

	Annual Time Burden (hours)			External Cost Burden (dollars)		
	Currently Approved	Revised Estimate	Change	Currently Approved	Revised Estimate	Change
Rule 17d-1	3,225	5,325	+2,100	\$2,283,300	\$4,146,400	+\$1,863,100

We have revised the estimates to reflect changes in the number of affected entities, as well as in the external cost associated with the information collection requirements.

16. Plans for Publishing Results

Not applicable. The information is not published for statistical use.

17. Approval to Omit Display OMB Expiration Date

The Commission is not seeking such approval.

18. Exceptions to Certification Statement for Paperwork Reduction Act

Submission

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