

requirements in Regulation R, Rule 701 are 500<sup>1</sup> hours for brokers or dealers.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

*Comments should be directed to:* (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: February 19, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-4239 Filed 3-1-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available*

*From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

*Extension:*

Form N-Q; SEC File No. 270-519; OMB Control No. 3235-0578.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N-Q (17 CFR 249.332 and 274.130) is a combined reporting form that is used for reports of registered management investment companies ("funds"), other than small business investment companies registered on Form N-5, under Section 30(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Investment Company Act") and Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Pursuant to

<sup>1</sup> (2000 notices × 15 minutes) = 30,000 minutes/60 minutes = 500 hours.

Rule 30b1-5 under the Investment Company Act, funds are required to file with the Commission quarterly reports on Form N-Q not more than 60 days after the close of the first and third quarters of each fiscal year containing their complete portfolio holdings.

Form N-Q contains collection of information requirements. The respondents to this information collection are management investment companies subject to Rule 30b1-5 under the Investment Company Act. Approximately 8,000 portfolios are required to file reports on Form N-Q, which is estimated to require an average of 21 hours per portfolio per year to complete. The estimated annual burden of complying with the filing requirement is approximately 168,000 hours. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) 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 under Form N-Q is mandatory. The information provided by the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

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*From:* Securities and Exchange Commission, Office of Investor

Education and Advocacy, Washington, DC 20549-0213.

*Extension:*

Rule 3a-4; SEC File No. 270-401; OMB Control No. 3235-0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 3a-4 (17 CFR 270.3a-4) under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" and "mutual fund wrap" programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Some of these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a-4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a-4 are not required to register under the Investment Company Act or comply with the Act's requirements.<sup>1</sup> These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a-4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent

<sup>1</sup> Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) (62 FR 15098 (Mar. 31, 1997)) ("Adopting Release"). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. See 17 CFR 270.3a-4, introductory note.

with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor<sup>2</sup> (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.<sup>3</sup> In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.<sup>4</sup>

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The requirement that the sponsor (or its designee) obtain information about each new client's financial situation and investment objectives when their account is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account. Maintaining current information enables the portfolio manager to evaluate each

client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure each client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that 3,109,671 clients participate each year in investment advisory programs relying on rule 3a-4. Of that number, the staff estimates that 220,805 are new clients and 2,888,866 are continuing clients. The staff estimates that each year investment advisory program sponsors staff engage in 1.5 hours per new client and 0.75 hours per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule. Furthermore, the staff estimates that each year investment advisory program staff spends 1 hour per client to prepare and mail quarterly client account statements, including notices to update information. Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 5,607,528 hours.

The total annual hour burden of 5,607,528 hours represents an increase of 1,158,112.5 hours from the prior estimate of 4,449,415.5 hours. This increase principally results from an increase in the number of continuing clients, but also reflects an increase in the estimated burden hours associated with several of the collections of information required under the rule. The increase in estimated burden hours per collection of information results from an increase in burden hours reported by representatives of investment advisers that rely on rule 3a-4 that Commission staff surveyed.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's safe harbor. Nevertheless, rule 3a-4 is a nonexclusive safe harbor, and a program that does not comply with the rule's collection of information requirements does not necessarily meet the Investment Company Act's definition of investment company. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 4, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 4, 2010 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been

<sup>2</sup> For purposes of rule 3a-4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

<sup>3</sup> Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

<sup>4</sup> The sponsor also must provide a means by which clients can contact the sponsor (or its designee).