

shareholders following the discovery of the inaccuracy.

The purpose of rule 19a-1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a-1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 11,818 series of registered investment companies that are management companies may be subject to rule 19a-1 each year,<sup>3</sup> and that each portfolio on average mails two statements per year to meet the requirements of the rule.<sup>4</sup> The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 23,636 burden hours.<sup>5</sup>

The staff estimates that approximately one-third of the total annual burden (7,879 hours) would be incurred by a paralegal with an average hourly wage rate of approximately \$205 per hour,<sup>6</sup> and approximately two-thirds of the annual burden (15,757 hours) would be incurred by a compliance clerk with an average hourly wage rate of \$66 per hour.<sup>7</sup> The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately \$2,655,157 ((7,879

hours × \$205 = \$1,615,195) + (15,757 hours × \$66 = \$1,039,962)).

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a-1.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a-1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. 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.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 5, 2017.

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From: Securities and Exchange*

Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

#### Extension:

Rule 17Ad-3(b),  
SEC File No. 270-424, OMB Control No. 3235-0473.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad-3(b) (17 CFR 240.17Ad-3(b)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad-3(b) requires registered transfer agents to send a copy of the written notice required under Rules 17Ad-2(c), (d), and (h) to the chief executive officer of each issuer for which the transfer agent acts when it has failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad-2(a), or to process at least 75% of all items in accordance with the requirements of Rule 17Ad-2(b), for two consecutive months. The issuer may use the information contained in the notices: (1) As an early warning of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents; and (2) to become aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's issues. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad-3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad-2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that only one transfer agent will meet the requirements of Rule 17Ad-3(b) each year. If a transfer agent fails to meet those turnaround and processing performance requirements under 17Ad-3(b), it would simply send a copy of the notice to its issuer-clients that had already been produced for the Commission pursuant to Rule 17Ad-2(c) or (d). The Commission estimates

<sup>3</sup> This estimate is based on statistics compiled by Commission staff as of April 30, 2017. The number of management investment company portfolios that make distributions for which compliance with rule 19a-1 is required depends on a wide range of factors and can vary greatly across years. Therefore, the calculation of estimated burden hours is based on the total number of management investment company portfolios, each of which may be subject to rule 19a-1.

<sup>4</sup> A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

<sup>5</sup> This estimate is based on the following calculation: 11,818 management investment company portfolios × 2 statements per year × 1 hour per statement = 23,636 burden hours.

<sup>6</sup> Hourly rates are derived from the Securities Industry and Financial Markets Association ("SIFMA"), Management and Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

<sup>7</sup> Hourly rates are derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

the requirement will take each respondent approximately four hours to complete. The Commission staff estimates that compliance staff work at registered transfer agents to comply with the third party disclosure requirement will result in an internal cost of compliance, at an estimated hourly wage of \$283, of \$1,128 per year per transfer agent (4 hours × \$283 per hour = \$1,128 per year). Therefore, the aggregate annual internal cost of compliance for the approximately one registered transfer agent each year to comply with Rule 17Ad-3(b) is also \$1,128. There are no external labor costs associated with sending the notice to issuers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: [www.reginfo.gov](http://www.reginfo.gov). 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 email to: [Shagufta Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: [PRA Mailbox@sec.gov](mailto:PRA.Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: September 5, 2017.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

#### Extension:

Rule 0-1, SEC File No. 270-472, OMB Control No. 3235-0531

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

(“Commission”) plans to submit to the Office of Management and Budget a request for extension of the previous approved collection of information discussed below.

The Investment Company Act of 1940 (the “Act”)<sup>1</sup> establishes a comprehensive framework for regulating the organization and operation of investment companies (“funds”). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.<sup>2</sup>

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0-1 (17 CFR 270.0-1).<sup>3</sup> Rule 0-1, as subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission’s rules and regulations. Finally, rule 0-1 defines terms that serve as conditions to the availability of certain of the Commission’s exemptive rules. More specifically, the term “independent legal counsel,” as defined in rule 0-1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules (“exemptive rules”) under the Act.<sup>4</sup>

The Commission amended rule 0-1 to include the definition of the term “independent legal counsel” in 2001.<sup>5</sup> This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of

any fund that relies on any of the exemptive rules must be an “independent legal counsel.” This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board’s counsel has represented the fund’s investment adviser, principal underwriter, administrator (collectively, “management organizations”) or their “control persons”<sup>6</sup> during the past two years, rule 0-1 requires that the board’s independent directors make a determination about the adequacy of the counsel’s independence. A majority of the board’s independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel’s prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel’s professional judgment and legal representation. Rule 0-1 also requires that a record for the basis of this determination is made in the minutes of the directors’ meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of “independent legal counsel” under rule 0-1. We assume that approximately 3,108 funds rely on at least one of the exemptive rules annually.<sup>7</sup> We further assume that the independent directors of approximately one-third (1,036) of those funds would need to make the required determination in order for their counsel to meet the definition of

<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> For example, fund directors must approve investment advisory and distribution contracts. See 15 U.S.C. 80a-15(a), (b), and (c).

<sup>3</sup> Investment Company Act Release No. 4 (Oct. 29, 1940) (5 FR 4316 (Oct. 31, 1940)). Note that rule 0-1 was originally adopted as rule N-1.

<sup>4</sup> The relevant exemptive rules are: Rule 10f-3 (17 CFR 270.10f-3), rule 12b-1 (17 CFR 270.12b-1), rule 15a-4(b)(2) (17 CFR 270.15a-4(b)(2)), rule 17a-7 (17 CFR 270.17a-7), rule 17a-8 (17 CFR 270.17a-8), rule 17d-1(d)(7) (17 CFR 270.17d-1(d)(7)), rule 17e-1(c) (17 CFR 270.17e-1(c)), rule 17g-1 (17 CFR 270.17g-1), rule 18f-3 (17 CFR 270.18f-3), and rule 23c-3 (17 CFR 270.23c-3).

<sup>5</sup> See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3735 (Jan. 16, 2001)).

<sup>6</sup> A “control person” is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund’s management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

<sup>7</sup> Based on statistics compiled by Commission staff, we estimate that there are approximately 3,453 funds that could rely on one or more of the exemptive rules (this figure reflects the three-year average of open-end and closed-end funds (3,349) and business development companies (104)). Of those funds, we assume that approximately 90 percent (3,108) actually rely on at least one exemptive rule annually.