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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From:  
Securities and Exchange Commission  
Office of Investor Education and Advocacy  
Washington, DC 20549-0213

Extension: Rule 17a-10

SEC File No. 270-507, OMB Control No. 3235-0563

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") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 17(a) of the Investment Company Act of 1940 (the "Act"), generally prohibits affiliated persons of a registered investment company ("fund") from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.<sup>1</sup> Section 2(a)(3) of the Act defines "affiliated person" of a fund to include its investment advisers.<sup>2</sup> Rule 17a-10 (17 CFR 270.17a-10) permits (i) a subadviser<sup>3</sup> of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (e.g., other funds in the fund complex), and (ii) a

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<sup>1</sup> 15 U.S.C. 80a-17(a).

<sup>2</sup> 15 U.S.C. 80a-2(a)(3)(E).

<sup>3</sup> As defined in rule 17a-10(b)(2). 17 CFR 270.17a-10(b)(2).

subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a-10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio.<sup>4</sup> Section 17(a) of the Investment Company Act of 1940 (the "Act"), generally prohibits affiliated persons of a registered investment company ("fund") from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. Section 2(a)(3) of the Act defines "affiliated person" of a fund to include its investment advisers. Rule 17a-10 permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (e.g., other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a-10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the

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<sup>4</sup> 17 CFR 270.17a-10(a)(2).

subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio. This requirement regarding the prohibitions and limitations in advisory contracts of subadvisers relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 ("PRA").<sup>5</sup>

The staff assumes that all existing funds with subadvisory contracts amended those contracts to comply with the adoption of rule 17a-10 in 2003, which conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.<sup>6</sup> However, the staff assumes that all newly formed subadvised funds, and funds that enter into new contracts with subadvisers, will incur the one-time burden by amending their contracts to add the terms required by the rule.

Based on an analysis of fund filings, the staff estimates that approximately 319 funds enter into new subadvisory agreements each year.<sup>7</sup> Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be

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<sup>5</sup> 44 U.S.C. 3501.

<sup>6</sup> Transactions of Investment Companies With Portfolio and Subadviser Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3153, (Jan. 22, 2003)]. We assume that funds formed after 2003 that intended to rely on rule 17a-10 would have included the required provision as a standard element in their initial subadvisory contracts.

<sup>7</sup> Based on data from Morningstar, as of June 2016, there are 12,485 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,629 funds of which have subadvisory relationships (approximately 37%). Based on data from the 2016 ICI Factbook, 862 new funds were established in 2015 (594 open-end funds + 258 exchange-traded funds + 10 closed-end funds (from the ICI Research Perspective, April 2016)). 862 new funds x 37% = 319 funds.

able to rely on the exemptions in rule 17a-10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f-3, 12d3-1, and 17e-1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a-10 for this contract change would be 0.75 hours.<sup>8</sup> Assuming that all 319 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 239 burden hours annually, with an associated cost of approximately \$90,820.<sup>9</sup>

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. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a-10. Responses will not be 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.

Written comments are invited on: (a) whether the proposed collection of information is

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<sup>8</sup> This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

<sup>9</sup> These estimates are based on the following calculations: (0.75 hours × 319 portfolios = 239 burden hours); (\$380 per hour × 239 hours = \$90,820 total cost). The Commission's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys, modified to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of \$380. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection 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: November 22, 2016

Robert W. Errett  
Deputy Secretary