



## 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 12d3-1

SEC File No. 270-504, OMB Control No. 3235-0561

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 ("OMB") a request for extension of the previously approved collection of information discussed below.

Section 12(d)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a) generally prohibits registered investment companies ("funds"), and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter ("securities-related businesses"). Rule 12d3-1 ("Exemption of acquisitions of securities issued by persons engaged in securities related businesses" (17 CFR 270.12d3-1)) permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses, but a fund may not rely on rule 12d3-1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.

A fund may, however, rely on an exemption in rule 12d3-1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases.

The exemption in rule 12d3-1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio.

Based on an analysis of fund filings, the staff estimates that approximately 216 fund portfolios enter into subadvisory agreements each year.<sup>1</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 able to rely on the exemptions in rule 12d3-1. 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, 17a-10, 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 to all four rules. Therefore, we estimate that the burden allocated to rule 12d3-1 for this contract change would be 0.75 hours.<sup>2</sup> Assuming that all 216 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 182 burden hours annually.<sup>3</sup>

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<sup>1</sup> Based on data from Morningstar Direct, as of December 31, 2018, there are 12,459 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,615 of which have subadvisory relationships (approximately 37%). 583 new funds were established in 2018.  $583 \text{ new funds} \times 37\% = 216 \text{ funds}$ .

<sup>2</sup> This estimate is based on the following calculation ( $3 \text{ hours} \div 4 \text{ rules} = .75 \text{ hours}$ ).

<sup>3</sup> This estimate is based on the following calculation: ( $0.75 \text{ hours} \times 216 \text{ portfolios} = 182 \text{ burden hours}$ ).

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 12d3-1. 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.

The public may view the background documentation for this information collection at the following website, [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 e-mail to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street, NE, Washington, DC 20549 or send an email 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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