



[SEC File No. 270-237, OMB Control No. 3235-0226]

Proposed Collection; Comment Request

Extension: Rule 10f-3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collections of information discussed below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (“OMB”) for extension and approval.

Section 10(f) of the Investment Company Act of 1940 (15 U.S.C. 80a) (the “Act”) prohibits a registered investment company (“fund”) from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter for the security.¹ Congress enacted this provision in 1940 to protect funds and their shareholders by preventing underwriters from “dumping” unmarketable securities on affiliated funds.

Rule 10f-3 under the Act permits a fund to engage in a securities transaction that otherwise would violate Section 10(f) if, among other things: (i) the fund’s directors have approved procedures for purchases made in reliance on the rule, regularly review fund purchases to determine whether they comply with these procedures, and approve necessary changes to the procedures; and (ii) a written record of each transaction effected under the rule is maintained for six years, the first two of which in an easily accessible place.² The written record must state: (i) from whom the securities were acquired; (ii) the identity of the underwriting syndicate’s

¹ 15 U.S.C. 80a-10(f).

² 17 CFR 270.10f-3.

members; (iii) the terms of the transactions; and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board.

Rule 10f-3 also conditionally allows managed portions of fund portfolios to purchase securities offered in otherwise off-limits primary offerings. To qualify for this exemption, Rule 10f-3 requires that the subadviser that is advising the purchaser be contractually prohibited from providing investment advice to any other portion of the fund's portfolio and consulting with any other of the fund's advisers that is a principal underwriter or affiliated person of a principal underwriter concerning the fund's securities transactions.

These requirements provide a mechanism for fund boards to oversee compliance with the rule. The required recordkeeping facilitates the Commission staff's review of Rule 10f-3 transactions during routine fund inspections and, when necessary, in connection with enforcement actions.

The staff estimates that approximately 953 funds engage in at least one Rule 10f-3 transaction each year, for a total of 953 such transactions.³ Rule 10f-3 requires that the purchasing fund create a written record of each transaction that includes, among other things, from whom the securities were purchased and the terms of the transaction. The staff estimates that it takes an average fund approximately 30 minutes per transaction and, and, in the aggregate, approximately 477 hours⁴ for funds to comply with this portion of the rule.

The funds also must maintain and preserve these transactional records in accordance with the rule's recordkeeping requirement, and the staff estimates that it takes a fund approximately 20 minutes per transaction, and, in the aggregate, approximately 318 hours⁵ annually for funds to comply with this portion of the rule.

³ These estimates are based on data from Form N-CEN filings with the Commission.

⁴ This estimate is based on the following calculation: (0.5 hours x 953 = 477 hours).

⁵ This estimate is based on the following calculations: (20 minutes x 953 transactions = 19,060 minutes; 19,060 minutes / 60 = 318 hours).

In addition, fund boards must, no less than quarterly, examine each of these transactions to ensure that they comply with the fund's policies and procedures. The information or materials upon which the board relied to come to this determination also must be maintained and the staff estimates that it takes a fund 1 hour per quarter and, in the aggregate, approximately 3,812 hours⁶ annually for funds to comply with this rule requirement.

The staff estimates that reviewing and revising as needed written procedures for Rule 10f-3 transactions takes, on average for each fund, two hours of a compliance attorney's time per year.⁷ Thus, annually, in the aggregate, the staff estimates that funds spend a total of approximately 1,906 hours⁸ on monitoring and revising Rule 10f-3 procedures.

Based on an analysis of Form N-CEN filings, the staff estimates that approximately 146 new funds enter into subadvisory agreements each year.⁹ The staff estimates that it will require approximately 0.75 hours to draft and execute additional clauses in subadvisory contracts in order for new funds and subadvisers to be able to rely on the exemptions in Rule 10f-3.¹⁰ Assuming that all 146 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 110 burden hours annually for new funds.¹¹

⁶ This estimate is based on the following calculation: (1 hour per quarter x 4 quarters x 953 funds = 3,812 hours).

⁷ These averages take into account the fact that in most years, fund attorneys and boards spend little or no time modifying procedures and in other years, they spend significant time doing so.

⁸ This estimate is based on the following calculation: (953 funds x 2 hours = 1,906 hours).

⁹ Based on information in Form N-CEN filings, we estimate that approximately 139 new open-end funds and 7 new closed-end funds, or a total of 146 new funds enter into new subadvisory agreements each year (139 + 7 = 146 new funds). We understand that existing funds may also enter into new subadvisory agreements, but in many cases would benefit from having previously drafted Rule 10f-3 clauses in prior or existing subadvisory contracts.

¹⁰ Because such clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on Rules 12d3-1, 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 10f-3 for this contract change would be 0.75 hours (3 hours ÷ 4 rules = 0.75 hours).

¹¹ These estimates are based on the following calculations: (0.75 hours × 146 portfolios = 110 burden hours).

The staff estimates, therefore, that Rule 10f-3 imposes an information collection burden of 6,623 hours.¹²

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 David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street, NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: July 15, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

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¹² This estimate is based on the following calculation: (477 hours + 318 hours + 3,812 hours + 1,906 hours + 110 hours = 6,623 total burden hours).