



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-505, OMB Control No. 3235-0562]

Submission for OMB Review; Comment Request; Extension: Rule 17d-1

Upon Written Request, Copies Available From

Securities and Exchange Commission

Office of FOIA Services

100 F Street, NE

Washington, DC 20549-2736

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”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a-17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a et seq.) (the “Act”) prohibits first- and second-tier affiliates of a fund, the fund’s principal underwriters, and affiliated persons of the fund’s principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission’s rules. Rule 17d-1 (17 CFR 270.17d-1) prohibits an affiliated person of or principal underwriter for any fund (a “first-tier affiliate”), or any affiliated person of such person or underwriter (a “second-tier affiliate”), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement “an application regarding [the transaction] has been filed with the Commission and has been granted by an order.” In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different

from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d-1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements regarding liability insurance policies and transactions with “portfolio affiliates” (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (e.g., the fund's adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a “financial interest” in a party to the transaction. The rule excludes from the definition of “financial interest” any interest that the fund’s board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d-1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule’s prohibition on joint transactions or arrangements involving first- or second-tier affiliates. Second, rule 17d-1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d-1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds’ shareholders.

Based on an analysis of past filings, Commission staff estimates that 43 funds file applications under section 17(d) and rule 17d-1 per year. The staff understands that funds that file an application generally obtain assistance from outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The Commission staff estimates that each applicant will spend an average of 75 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d-1's application process to be 3,225 hours at a cost of \$1,428,675.¹ The Commission, therefore, requests authorization to reduce the inventory of total burden hours per year for all funds under rule 17d-1 from the current authorized burden of 3,542 hours to 3,225 hours. The reduction is due to a decrease in the Commission's estimate of the number of internal annual burden hours per application for exemptions under rule 17d-1.

As noted above, the Commission staff understands that funds that file an application under rule 17d-1 generally use outside counsel to assist in preparing the application. The staff estimates that, on average, funds spend an additional \$53,100 for outside legal services in connection with seeking Commission approval of affiliated joint transactions. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 17d-1 is \$2,283,300.²

We estimate that funds currently do not rely on the exemption from the term "financial interest" with respect to any interest that the fund's board of directors (including a majority of

¹ This estimate is based on the following calculation: 75 hours per applicant x \$433 wage rate = \$33,225. \$33,225 x 43 exemption requests per year = \$1,428,675. This blended rate is based on the following: \$580 (hourly rate for a chief compliance officer); \$510 (hourly rate for an assistant general counsel); and \$238 (hourly rate for a paralegal). The Commission's estimates of the relevant wage rates are based on the salary information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff ("SIFMA Wage Report"). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

² This estimated burden is based on the estimated wage rate of \$531/hour, for 100 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation. The estimate is based on the following calculation: \$53,100 x 43 exemption requests per year = \$2,283,300.

the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no transactions under rule 17d-1 that will result in this aspect of the collection of information.

Based on these calculations, the total annual hour burden is estimated to be 3,225 hours and the total annual cost burden is estimated to be \$2,283,300.

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 these collections of information requirement is necessary to obtain the benefit of relying on rule 17d-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 background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo , 100 F Street, NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: March 13, 2023.

Sherry R. Haywood,

Assistant Secretary.

