



## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-xxx, OMB Control No. 3235-0779]

### Proposed Collection; Comment Request; Extension: Rule 2a-5

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. 3501-3520), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Section 2(a)(41) of the Investment Company Act of 1940 (“Investment Company Act”)<sup>1</sup> requires funds to value their portfolio investments using the market value of their portfolio securities when market quotations for those securities are “readily available,” and, when a market quotation for a portfolio security is not readily available, by using the fair value of that security, as determined in good faith by the fund’s board.<sup>2</sup> The aggregate value of a fund’s investments is the primary determinant of the fund’s net asset value (“NAV”), which for many funds determines the price at which their shares are offered and redeemed (or repurchased).<sup>3</sup>

Rule 2a-5 provides requirements for determining in good faith the fair value of the investments of a registered investment company or companies that have elected to be treated as

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

<sup>2</sup> 15 U.S.C. 80a-2(a)(41). *See also* 17 CFR 270.2a-4.

<sup>3</sup> *See* 15 U.S.C. 80a-22(c) and 23(c). *See also* 17 CFR 270.22c-1(a).

business development companies under the Investment Company Act (“BDCs” and, collectively, “funds”) for purposes of section 2(a)(41) of the Investment Company Act and rule 2a-4 thereunder.<sup>4</sup> Under the rule, fair value as determined in good faith requires assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; and overseeing and evaluating any pricing services used. The rule also permits a fund’s board to designate a “valuation designee” to perform fair value determinations. The valuation designee can be the adviser of the fund or an officer of an internally managed fund.<sup>5</sup> When a board designates the performance of determinations of fair value to a valuation designee for some or all of the fund’s investments under the rule, the rule requires the board to oversee the valuation designee’s performance of fair value determinations.

To facilitate the board’s oversight, the rule also includes certain reporting and other requirements in the case of designation to a valuation designee.<sup>6</sup> As relevant here, the rule requires, if the board designates performance of fair value determinations to a valuation designee, that the valuation designee report to the board in both periodic and as needed reports on a per-fund basis.

Specifically, on a periodic basis, the valuation designee must provide to the board:

- Quarterly Reports. At least quarterly, in writing, (1) any reports or materials requested by the board related to the fair value of designated investments or the valuation designee’s process for fair valuing fund investments and (2) a summary or description of material fair value matters that occurred in the prior quarter.

This summary or description must include (1) any material changes in the assessment and management of valuation risks, including any material changes in conflicts of interest of the valuation designee (and any other service provider), (2)

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<sup>4</sup> See Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 (Dec. 7, 2020) (“Adopting Release”).

<sup>5</sup> Rule 2a-5(e)(4).

<sup>6</sup> Rule 2a-5(b).

any material changes to, or material deviations from, the fair value methodologies, and (3) any material changes to the valuation designee's process for selecting and overseeing pricing services, as well as any material events related to the valuation designee's oversight of pricing services.

- Annual Reports. At least annually, in writing, an assessment of the adequacy and effectiveness of the valuation designee's process for determining the fair value of the designated portfolio of investments. At a minimum, this annual report must include a summary of the results of the testing of fair value methodologies required under the rule and an assessment of the adequacy of resources allocated to the process for determining the fair value of designated investments, including any material changes to the roles or functions of the persons responsible for determining fair value.

Further, the rule requires the valuation designee to provide a written notification to the board of the occurrence of matters that materially affect the fair value of the designated portfolio of investments (defined as "material matters") within a time period determined by the board, but in no event later than five business days after the valuation designee becomes aware of the material matter. Material matters in this instance include, as examples, a significant deficiency or material weakness in the design or effectiveness of the valuation designee's fair value determination process or of material errors in the calculation of net asset value. The valuation designee must also provide such timely follow-on reports as the board may reasonably determine are appropriate.<sup>7</sup>

The Commission staff estimates that 9,800 funds are subject to rule 2a-5. The internal annual burden estimate is 34 hours for a fund. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 333,200 hours. The estimated burden hours

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<sup>7</sup> Rule 2a-5(b).

associated with rule 2a-5 have increased by 15,810 hours from the current allocation of 317,390 hours. The external cost associated with this collection of information is approximately \$3,674 per fund, and the total annual external cost burden is \$36,005,200. The estimated external cost has increased by \$6,319,900 from the current estimate of \$29,685,300. These increases are due to an increase in the estimated number of affected entities, as well as in the estimated hourly burden and the external cost associated with the information collection requirements.

The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the cost of Commission rules. The collection of information required by rule 2a-5 is necessary to obtain the benefits of the rule. Other information provided to the Commission in connection with staff examinations or investigations is kept confidential subject to the provisions of applicable law. If information collected pursuant to rule 2a-5 is reviewed by the Commission's examination staff, it is accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission'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 by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: October 13, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

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