



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-578, OMB Control No. 3235-0639]

Submission for OMB Review; Comment Request; Extension: Rule 12d1-4

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Securities and Exchange Commission

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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.

Rule 12d1-4 (17 CFR 270.12d1-4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (“Investment Company Act”) permits certain registered funds and business development companies (“BDC”) (“acquiring fund”) that satisfy certain conditions to acquire shares of other certain registered funds and BDCs (“acquired fund”) in excess of the limits of section 12(d)(1) of the Act without obtaining an exemptive order from the Commission.¹ This collection of information is voluntary because rule 12d1-4 is an exemptive rule and, therefore, funds may choose not to rely on the proposed rule. 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 OMB control number. The purpose of the information collection requirement in rule 12d1-4 is to ensure both that the concerns that led Congress to adopt section 12(d)(1) are mitigated and that funds relying

¹ See 17 CFR 270.12d1-4.

upon the rule as an exemption from that section comply with the rule's requirements. The following estimates of average internal burden hours are made solely for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Voting Provisions. With respect to voting provisions, Commission staff estimates that 446 acquiring funds will be subject to the requirements in rule 12d1-4(b)(ii), 436 of which will be utilizing mirror voting and 10 of which will be utilizing pass-through voting.² With respect to mirror voting, Commission staff estimates that, on average, internal counsel for such funds will spend 3 hours updating proxy voting policies and disclosures for such funds and 3 hours conducting voting procedures. Thus, the staff estimates that the annual hour burden of the collection of information imposed by the mirror voting provisions to be 6 hours per fund, resulting in a total burden of 2,616 hours.³

² 446 acquiring funds that will invest in open-end funds or UITs in reliance on rule 12d1-4 and beyond the 25% voting threshold = 4,061 series of management companies relying upon rule 12d1-4 or statutory exemption per Form N-CEN items C.7.l and C.7.m (based on data as of December 2022, as derived from N-CEN filings through July 14, 2023) plus 37 acquiring BDCs (consistent with the prior renewal) and multiplied by 11% of acquiring funds that invest in at least one open-end fund or UIT beyond the 25% voting threshold of the rule (as estimated in the prior renewal); this estimate assumes that acquiring funds with current investments in other funds beyond the limits of section 12(d)(1) are subject to rule 12d1-4 at the same rate as the acquiring funds with current investments in other funds within the limits of section 12(d)(1); we lack structured data that would allow us to estimate the percentage of acquiring funds that are within the same group of investment companies as the acquired fund or the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor, and thus will be subject to the rule's voting condition; to avoid underestimating the costs associated with this aspect of rule 12d1-4, we assume that all the 446 acquiring funds will be subject to the rule's conditions; we estimate that of 10 funds will utilize pass-through voting in limited circumstances; in circumstances where all holders of the outstanding voting securities of the acquired fund are required by rule 12d1-4 or otherwise under section 12(d)(1) to mirror vote the securities of the acquired fund, the acquiring fund may use pass-through instead of mirror voting; it is estimated that (consistent with the prior renewal) 2.2% of acquiring funds that will invest in open-end funds or UITs in reliance on rule 12d1-4 and beyond the 25% voting threshold will use pass-through voting (*i.e.*, 2.2% of 446 acquiring funds equals 10 funds using pass-through voting).

³ This estimate is based on the following calculations: 2,616 = 6 hours x 436 funds.

In addition to the mirror voting provisions of the rule, there are some circumstances in which the acquiring funds are the only shareholders of an acquired fund, and in such cases, pass-through voting may be used. Staff estimates that 10 funds will use pass-through voting. Staff estimates that internal counsel for such funds will spend 3 hours updating proxy voting policies and disclosures and 30 hours communicating with shareholders and voting accordingly. Thus, the staff estimates that the annual hour burden of the collection of information imposed by the pass-through provisions to be 33 hours per fund, resulting in a total burden of 330 hours.⁴

Combining the estimates for the mirror voting and pass-through voting calculations, staff estimates that 446 funds will spend a total of 2,946 hours complying with the voting provisions of the rule.⁵

Fund of Funds Investment Agreements. With respect to the fund of funds investment agreement provisions, Commission staff estimates that 12,900 funds that do not have the same investment adviser are subject to the requirement to enter into an agreement prior to the purchase of acquired fund shares in excess of section 12(d)(1)'s limits.⁶ Commission staff estimates, however, that the majority of affected funds have already complied with this requirement and staff assumes that, absent structured data to further calculate, 645 funds (5% of affected funds) would be newly subject to the rule on an annual basis.⁷ Commission staff estimates that such newly affected funds will spend 20 hours negotiating and memorializing the necessary agreements. Commission staff

⁴ This estimate is based on the following calculations: 330 hours (33 hours x 10 funds).

⁵ This estimate is based on the following calculations: 446 (436 + 10; combined total of funds using mirror voting and funds using pass-through voting); 2,946 (2,616 hours plus 330 hours).

⁶ This estimate is based on the number of acquiring-acquired fund pairs that do not share the same adviser as indicated in form N-PORT data between December 2022 and July 14, 2023 (18,695) and, consistent with the prior renewal, assumes that 69% of such acquiring-acquired fund pairs will be subject to rule 12d1-4 (*i.e.*, 12,900 = 18,695 x 0.69).

⁷ This estimate is based on the following calculation: 645 = 12,900 x 0.05.

further estimates that newly affected funds will spend 6 hours establishing recordkeeping and policies and procedures. Accordingly, staff estimates that the annual burden solely for newly affected funds will be 26 hours.⁸ Commission staff further estimates that all affected funds will spend 12 hours on ongoing recordkeeping, resulting in a total annual hour burden of 171,570 hours.⁹

Management Companies – Fund Filings. With respect to the management company fund finding provisions, Commission staff estimates that 2,974 acquired management companies will be subject to rule 12d1-4.¹⁰ Commission staff further estimates that 4,965 acquiring management companies will be subject to rule 12d1-4.¹¹ This results in 7,939 management companies being subject to rule 12d1-4.¹² Commission staff estimates that such management companies will spend 18 hours conducting evaluations and creating, reviewing, and maintaining written materials pursuant to the rule, resulting in a total annual hour burden of 142,902 hours.¹³

⁸ This estimate is based on the following calculations: 26 hours = 20 + 6.

⁹ This estimate is based on the following calculations: 171,570 hours = (26 hours x 645 newly affected funds) + (12 hours x 12,900 affected funds).

¹⁰ 2,974 acquired management companies that will be subject to rule 12d1-4 = 4,310 acquired management companies x 69% of acquired management companies that will be subject to rule 12d1-4 (as estimated in the prior renewal); our calculation assumes that the estimate of acquiring funds that will be subject to rule 12d1-4 is also applicable to acquired funds; 4,310 acquired management companies = 3,170 acquired registered investment companies (based on data as of December 2022, as derived from N-PORT filings through July 14, 2023) x 17,546 registered investment companies (based on data as of December 2022, as derived from N-PORT filings through July 14, 2023) / 12,906 management companies (based on data as of December 2022, as derived from N-CEN filings through July 14, 2023); this estimate assumes that acquired management companies with investments from acquiring funds beyond the limits of section 12(d)(1) will be subject to rule 12d1-4 at the same rate as the acquired management companies with investments from acquiring funds within the limits of section 12(d)(1).

¹¹ 4,965 acquiring management companies that will be subject to rule 12d1-4 = 7,195 acquiring management companies (based on data as of December 2022, as derived from N-PORT filings through July 14, 2023) x 69% of acquiring management companies that will be subject to rule 12d1-4 (consistent with the prior renewal); this estimate assumes that acquiring management companies with current investments in other funds beyond the limits of section 12(d)(1) will be subject to rule 12d1-4 at the same rate as the acquiring management companies with current investments in other funds within the limits of section 12(d)(1) following the rule adoption.

¹² 7,939 = 2,974 + 4,965.

¹³ This estimate is based on the following calculations: 142,902 = 18 hours x 7,939 funds.

UITs -- Principal Underwriter or Depositor Evaluations. With respect to the UIT principal underwriter or depositor evaluations, Commission staff estimates that 541 acquiring UITs will be subject to rule 12d1-4.¹⁴ Commission staff estimates that such UITs will spend 5 hours annually conducting evaluations and creating, reviewing, and maintaining written materials.¹⁵ This results in a total annual hour burden of 2,705 hours.¹⁶

Separate Accounts Funding Variable Insurance Contracts. With respect to the separate account funding variable insurance contracts, Commission staff estimates that 186 acquiring separate accounts will be subject to rule 12d1-4.¹⁷ Commission staff estimates that separate accounts will spend 4 hours annually obtaining certificates and maintaining records, resulting in a total annual hour burden of 744 hours.¹⁸

The following estimates of external costs are made solely for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Voting Provisions. The staff estimates that, on average, outside counsel will spend 1 hour per vote conducting voting procedures with respect to mirror voting at a cost of \$565 per hour. Staff therefore estimates an annual external cost burden of \$246,340 with

¹⁴ This estimate assumes that there are 1,353 series of UITs and that 40% of such UITs are acquiring UITs (as estimated in the prior renewal); the estimate of 1,353 series of UITs is based on data as of December 2022, as derived from N-CEN filings (items F.18 and F.19) through July 14, 2023.

¹⁵ This estimate assumes 2.5 hours of general clerk time and 2.5 hours of senior computer operator time. 5 hours = 2.5 + 2.5.

¹⁶ This estimate is based on the following calculations: 2,705 = 5 hours x 541 funds.

¹⁷ 186 acquiring separate accounts that will be subject to rule 12d1-4 = [418 variable annuity separate accounts registered as UITs + 240 variable life insurance separate accounts registered as UITs + 15 management company separate accounts (these figures are based on data as of December 2022, as derived from N-CEN filings through July 14, 2023)] x 40% of funds that are acquiring funds (as estimated in the prior renewal) x 69% of acquiring separate accounts that will be subject to rule 12d1-4 as estimated by a commenter (as estimated in the prior renewal).

¹⁸ This estimate is based on the following calculations: 744 = 4 hours x 186 funds.

respect to mirror voting.¹⁹ Staff further estimates that, with respect to pass-through voting, outside counsel will spend 1 hour to assist funds in communicating with shareholders and voting accordingly at a rate of \$565 per hour. Staff therefore estimates an annual external cost burden of \$5,650 with respect to pass-through voting.²⁰ Accordingly, staff estimates a total annual external cost of \$251,990 for compliance with the voting provisions of the rule.²¹

Fund of Funds Investment Agreement. Staff estimates that, on average, for funds newly subject to the rule, outside counsel will spend 2 hours negotiating and memorializing the necessary agreements under the rule at a cost of \$565 per hour. Staff further estimates that, on average, for funds newly subject to the rule, outside counsel will spend 4 hours establishing recordkeeping policies and procedures. Accordingly, staff estimates a total annual external costs of \$2,186,550 for compliance with the fund of funds investment agreement provisions of the rule.²²

Management Companies – Fund Filings. It is estimated that there is no external cost burden with respect to the management company findings provisions of the rule.

UITs -- Principal Underwriter or Depositor Evaluations. It is estimated that there is no external cost burden with respect to the UIT evaluation provisions of the rule.

Separate Accounts Funding Variable Insurance Contracts. It is estimated that there is no external cost burden with respect to the separate account certification provisions of the rule.

¹⁹ $\$246,340 = (\$565 \times 1 \text{ hour}) \times 436 \text{ funds subject to mirror voting.}$

²⁰ $\$5,650 = (\$565 \times 1 \text{ hour}) \times 10 \text{ funds subject to pass through voting.}$

²¹ $\$251,990 = \$246,340 + \$5,650.$

²² $\$2,186,550 = [(\$565 \times 2) + (\$565 \times 4)] \times 645 \text{ funds newly subject to the fund of funds investment agreement provisions of the rule; see footnote 7 for the calculation of funds newly subject to the rule.}$

As outlined above, we estimate the total external cost burden to comply with rule 12d1-4 to be \$2,438,540.²³

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.

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Sherry R. Haywood,

Assistant Secretary.

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²³ \$2,438,540 = \$251,990 + 2,186,550.