



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-321, OMB Control No. 3235-0358]

Submission for OMB Review; Comment Request; Extension: Rule 11a-3

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Securities and Exchange Commission

Office of FOIA Services

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Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 11(a) of the Investment Company Act of 1940 (“Act”) (15 U.S.C. 80a-11(a)) provides that it is unlawful for a registered open-end investment company (“fund”) or its underwriter to make an offer to the fund’s shareholders or the shareholders of any other fund to exchange the fund’s securities for securities of the same or another fund on any basis other than the relative net asset values (“NAVs”) of the respective securities to be exchanged, “unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers.” Section 11(a) was designed to prevent “switching,” the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a-3 (17 CFR 270.11a-3) under the Act of 1940 is an exemptive rule that permits open-end investment companies (“funds”), other than insurance company separate accounts, and

funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

The staff estimates that there are approximately 1,379 active open-end investment companies registered with the Commission as of December 2022 (using filings made through July 2023). The staff estimates that 25 percent of these funds (345 funds) impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time (at an estimated \$73 per hour)¹ per fund, for a total of 345 hours for all funds (at a total annual cost of \$25,185).²

¹ This estimate of \$73 per hour for clerical work and the other estimated wage rates below are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013; the estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and adjusted to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

² This estimate is based on the following calculations: (1,379 funds × 25% = 345 funds); (345 × 1 (clerical hour) = 345 clerical hours); (345 × \$73 = \$25,185 total annual cost for recordkeeping requirement).

The staff estimates that 5 percent of these 1,379 funds (or 69 funds) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time (at an estimated \$484 per hour) and 2 hours of clerical time (at an estimated \$73 per hour) per fund, for a total of approximately 207 hours for all funds to comply with the notice requirement (at a total annual cost of \$43,470).³ The staff estimates that such notices will be enclosed with other written materials sent to shareholders, such as annual shareholder reports or account statements, and therefore any burdens associated with mailing required notices are accounted for in the burdens associated with Form N-1A registration statements for funds.

The recordkeeping and notice requirements together impose an estimated total burden of 552 hours on all funds (at a total annual cost of \$68,655).⁴ The total number of respondents is 414, each responding once a year.⁵ The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N-1A registration statement for funds.

Table 1 below summarizes the currently approved and updated burdens associated with rule 11a-3.

Table 1: Summary of Burden Estimates for Rule 11a-3

| | Internal Burden | Wage Rate | Cost of Internal Burden |
|---|-----------------|----------------------|-------------------------|
| CURRENTLY-APPROVED BURDEN ESTIMATES | | | |
| Recordkeeping Requirement | 1 hour | \$63/hr. (clerk) | \$63 |
| Respondents | 349 funds | | 349 funds |
| Total | 349 hours | | \$21,987 |
| Notice Requirement | 1 hour | \$419/hr. (attorney) | \$419 |
| | 2 hours | \$63/hr. (clerk) | \$126 |
| Respondents | 70 funds | | 70 funds |
| Total | 210 hours | | \$38,150 |
| Total Responses (Recordkeeping + Notice) | 419 | | |

³ This estimate is based on the following calculations: 1,379 funds × 5% = 69 funds; 69 × ((1 attorney hour × \$484 per hour) + (2 clerical hours × \$73 per hour)) = \$43,470 total annual cost.

⁴ This estimate is based on the following calculations: (207 (notice hours) + 345 (recordkeeping hours) = 552 total hours); (\$43,470 (notice costs) + \$25,185 (recordkeeping costs) = \$68,655 total annual costs).

⁵ This estimate is based on the following calculation: (345 funds responding to recordkeeping requirement + 69 funds responding to notice requirement = 414 total respondents).

| | | | |
|---|-----------|----------------------|-----------|
| Total Burden (Recordkeeping + Notice) | 559 hours | | \$60,137 |
| UPDATED BURDEN ESTIMATES | | | |
| Recordkeeping Requirement | 1 hour | \$73/hr. (clerk) | \$73 |
| Respondents | 345 funds | | 345 funds |
| Total | 345 funds | | \$25,185 |
| Notice Requirement | 1 hour | \$484/hr. (attorney) | \$484 |
| | 2 hours | \$73/hr. (clerk) | \$146 |
| Respondents | 69 funds | | 69 funds |
| Total | 207 hours | | \$43,470 |
| Total Responses (Recordkeeping + Notice) | 414 | | |
| Total Burden (Recordkeeping + Notice) | 552 hours | | \$68,655 |

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. 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: April 8, 2024.

Sherry R. Haywood,

Assistant Secretary.

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