



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-188, OMB Control No. 3235-0212]

Proposed Collection; Comment Request; Extension: Rule 12b-1

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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 (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Section 12(b) of the Investment Company Act of 1940 (the “Act”)¹ prohibits a registered open-end investment company (“fund”), other than a fund complying with Section 10(d) of the Act,² from acting as a distributor of securities that it has issued, except through an underwriter, in contravention of Commission rules.³ Rule 12b-1 under the Act permits a fund to bear expenses associated with the distribution of its shares, provided that the fund complies with certain requirements.⁴

Rule 12b-1 requires, among other things, that the fund adopt a written plan describing all material aspects of the proposed financing of distribution (“rule 12b-1 plan”).⁵ The rule 12b-1 plan must be in writing and approved by the fund’s board of directors, and separately by the

¹ 15 U.S.C. 80a-1 *et seq.*
² 15 U.S.C. 80a-10(d).
³ 15 U.S.C. 80a-12(b).
⁴ 17 CFR 270.12b-1.
⁵ 17 CFR 270.12b-1(b).

“independent” directors (as described in the rule).⁶ If the rule 12b-1 plan is being adopted after public offering of the fund’s voting securities, it must also be approved initially by a vote of at least a majority of the fund’s outstanding voting securities.⁷ Similarly, any material amendments to the rule 12b-1 plan must be approved by the fund’s directors, including the independent directors, and any material increase in the amount to be spent under the rule 12b-1 plan must be approved by the fund’s shareholders.⁸ In considering the implementation or continuance of a rule 12b-1 plan, the fund’s board must request and evaluate information reasonably necessary to make an informed decision.⁹ The board also must conclude, in the exercise of reasonable business judgment and in light of the directors’ fiduciary duties, that there is a reasonable likelihood that the rule 12b-1 plan will benefit the fund and its shareholders.¹⁰

The rule 12b-1 plan and, in certain instances, any related agreements must incorporate certain specified provisions, including that: (i) the plan or agreement will continue in effect for more than one year only if the board, including the independent directors, approve the continuance at least annually;¹¹ (ii) the fund’s board will review quarterly reports of the amounts spent under the plan;¹² and (iii) the plan may be terminated at any time by a majority vote of the independent directors or outstanding voting securities.¹³ Rule 12b-1 also requires the fund to preserve for six years copies of the rule 12b-1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for implementing or continuing the rule 12b-1 plan.¹⁴

Rule 12b-1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions.¹⁵ The rule requires funds that use broker-

⁶ 17 CFR 270.12b-1(b)(2).

⁷ 17 CFR 270.12b-1(b)(1).

⁸ 17 CFR 270.12b-1(b)(4).

⁹ 17 CFR 270.12b-1(d).

¹⁰ 17 CFR 270.12b-1(e).

¹¹ 17 CFR 270.12b-1(b)(3)(i).

¹² 17 CFR 270.12b-1(b)(3)(ii).

¹³ 17 CFR 270.12b-1(b)(3)(iii).

¹⁴ 17 CFR 270.12b-1(f).

¹⁵ 17 CFR 270.12b-1(h)(1).

dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) the persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser, or its principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.¹⁶

The board and shareholder approval requirements of the rule are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b-1 plan and, thus, are necessary for investor protection. The provisions that require the board to be provided with quarterly reports and termination authority are designed to ensure that the rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Commission staff estimates that there are approximately 5,246 funds (for purposes of this estimate, registered open-end investment companies or series thereof) that have at least one share class subject to a rule 12b-1 plan and approximately 250 fund families with common boards of directors that have at least one fund with a 12b-1 plan. The Commission further estimates that the annual hour burden for complying with the rule is 425 hours for each fund family with a portfolio that has a rule 12b-1 plan. We therefore estimate that the total hourly burden per year for all funds to comply with current information collection requirements under rule 12b-1 is

¹⁶ 17 CFR 270.12b-1(h)(2)(ii).

106,250 hours. Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b-1 plan. The staff further estimates that the cost of each fund's proxy is \$30,000. Thus, the total annual cost burden of rule 12b-1 to the fund industry is \$90,000.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collections of information required by rule 12b-1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential.

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: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street, NE Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov .

Dated: January 24, 2025.

Sherry R. Haywood,

Assistant Secretary.

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