8011-01P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request,
Copies Available From: Securities and Exchange Commission
Office of Investor Education and Advocacy
Washington, DC 20549-0213

Extension:

Rule 22c-2 SEC File No. 270-541 OMB Control No. 3235-0620

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 for extension and approval.

Rule 22c-2 (17 CFR 270.22c-2 "Mutual Fund Redemption Fees") under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act" or "Act") requires the board of directors (including a majority of independent directors) of most registered investment companies ("funds") to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Rule 22c-2 also requires a fund to enter into written agreements with their financial intermediaries (such as broker-dealers and retirement plan administrators) under which the fund, upon request, can obtain certain shareholder identity and trading information from the intermediaries. The written agreement must also allow the fund to direct the intermediary to prohibit further purchases or exchanges by specific shareholders that the fund has identified as being engaged in transactions that violate the fund's market timing policies. These requirements enable funds to obtain the information that they need to monitor the frequency of short-term trading in omnibus accounts and enforce their market timing policies.

The rule includes three “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).[1] First, the rule requires boards to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Second, funds must enter into information sharing agreements with all of their “financial intermediaries”[2] and maintain a copy of the written information sharing agreement with each intermediary in an easily accessible place for six years. Third, pursuant to the information sharing agreements, funds must have systems that enable them to request frequent trading information upon demand from their intermediaries, and to enforce any restrictions on trading required by funds under the rule.

The collections of information created by Rule 22c-2 are necessary for funds to effectively assess redemption fees, enforce their policies in frequent trading, and monitor short-term trading, including market timing, in omnibus accounts. These collections of information are mandatory for funds that redeem shares within seven days of purchase. The collections of information also are necessary to allow Commission staff to fulfill its examination and oversight responsibilities.

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1 44 U.S.C. 3501-3520.

2 The rule defines a Financial Intermediary as: (i) Any broker, dealer, bank, or other person that holds securities issued by the fund in nominee name; (ii) a unit investment trust or fund that invests in the fund in reliance on section 12(d)(i)(E) of the Act; and (iii) in the case of a participant directed employee benefit plan that owns the securities issued by the fund, a retirement plan’s administrator under section 316(A) of the Employee Retirement Security Act of 1974 (29 U.S.C. 1002(16)(A) or any person that maintains the plans’ participant records. Financial Intermediary does not include any person that the fund treats as an individual investor

Rule 22c-2(a)(1) requires the board of directors of all registered investment companies and series thereof (except for money market funds, ETFs, or funds that affirmatively permit short-term trading of its securities) to approve a redemption fee for the fund, or instead make a determination that a redemption fee is either not necessary or appropriate for the fund. Commission staff understands that the boards of all funds currently in operation have undertaken this process for the funds they currently oversee, and the rule does not require boards to review this determination periodically once it has been made. Accordingly, we expect that only boards of newly registered funds or newly created series thereof would undertake this determination. Commission staff estimates that approximately 117 funds or series thereof (excluding money market funds and ETFs) are newly formed each year and would need to make this determination.

Based on conversations with fund representatives,[3] Commission staff estimates that it takes approximately 2 hours of the boards' time, as a whole, to approve a redemption fee or make the required determination. In addition, Commission staff estimates that it takes compliance personnel of the fund approximately 8 hours to prepare trading, compliance, and other information regarding the fund's operations to enable the board to make its determination, and takes internal counsel of the fund approximately 3 hours to review this information and present its recommendations to the board. Therefore, for each fund board that undertakes this determination process, Commission staff estimates it expends approximately 13 hours.[4] As a

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with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund. Rule 22c-2(c)(1).

3 Unless otherwise stated, estimates throughout this analysis are derived from a survey of funds and conversations with fund representatives.

4 This calculation is based on the following estimate: (2 hours of board time + 3 hours of internal counsel time + 8 hours of compliance time = 13 hours).

result, Commission staff estimates that the total time spent for all funds on this process is 1521 hours.[5]

Rule 22c-2(a)(2) requires a fund to enter into information sharing agreements with each of its financial intermediaries. Commission staff understands that all currently registered funds have already entered into such agreements with their intermediaries. Funds enter into new relationships with intermediaries from time to time, however, which requires them to enter into new information sharing agreements. Commission staff understands that, in general, funds enter into information-sharing agreement when they initially establish a relationship with an intermediary, which is typically executed as an addendum to the distribution agreement. Commission staff estimates that there are approximately 6911 open-end fund series currently in operation (excluding money market funds and ETFs). However, the Commission staff understands that most shareholder information agreements are entered into by the fund group (a group of funds with a common investment adviser), and estimates that there are currently 669 currently active fund groups.[6] Commission staff estimates that, on average, each active fund group enters into relationships with approximately 3 new intermediaries each year. Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and modifies that agreement according to the requirements of each intermediary. Commission staff estimates that negotiating the terms and entering into an information sharing agreement takes a total of approximately 4 hours of attorney time per intermediary (representing 2.5 hours of fund attorney time and 1.5 hours of intermediary

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5 This calculation is based on the following estimate: (13 hours × 117 funds = 1521 hours).

6 ICI, 2011 INVESTMENT COMPANY FACT BOOK at Fig 1.7 (2011) (http://www.ici.org/stats/latest/2011_factbook.pdf).

attorney time). Accordingly, Commission staff estimates that each existing fund group expends 12 hours each year[7] to enter into new information sharing agreements, and all existing fund groups incur a total of 8028 hours.[8]

In addition, newly created funds advised by new entrants (effectively new fund groups) must enter into information sharing agreements with all of their financial intermediaries. Commission staff estimates that there are approximately 40 new funds or fund groups that form each year that will have to enter into information sharing agreements with each of their intermediaries.[9] Commission staff estimates that funds and fund groups formed by new advisers typically have relationships with significantly fewer intermediaries than existing fund groups, and estimates that new fund groups will typically enter into approximately 100 information sharing agreements with their intermediaries when they begin operations.[10] As discussed previously, Commission staff estimates that it takes approximately 4 hours of attorney time per intermediary to enter into information sharing agreements. Therefore, Commission staff estimates that each newly formed fund group will incur 400 hours of attorney time,[11] and all newly formed fund groups will incur a total of 16,000 hours to enter into information sharing

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[7] This estimate is based on the following calculation: (4 hours × 3 new intermediaries = 12 hours).

[8] This estimate is based on the following calculation: (12 hours × 669 fund groups = 8028 hours).

[9] ICI, 2011 INVESTMENT COMPANY FACT BOOK at Fig 1.7 (2011) (http://www.ici.org/stats/latest/2011_factbook.pdf).

[10] Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and then modifies that agreement to according the requirements of each intermediary.

[11] This estimate is based on the following calculation: (4 hours × 100 intermediaries = 400 hours).

agreements with their intermediaries.[12]

Rule 22c-2(a)(3) requires funds to maintain records of all information sharing agreements for 6 years in an easily accessible place. Commission staff estimates that there are approximately 6911 open-end fund series currently in operation (excluding money market funds and ETFs). However, the Commission staff anticipates that most shareholder information agreements will be stored at the fund group level and estimates that there are currently approximately 669 fund groups. Commission staff understands that information-sharing agreements are generally included as addendums to distribution agreements between funds and their intermediaries, and that these agreements would be stored as required by the rule as a matter of ordinary business practice. Therefore, Commission staff estimates that maintaining records of information sharing agreements requires approximately 10 minutes of time spent by a general clerk per fund, each year. Accordingly, Commission staff estimates that all funds will incur approximately 112 hours[13] in complying with the recordkeeping requirement of rule 22c-2(a)(3).

Therefore, Commission staff estimates that to comply with the information sharing agreement requirements of rule 22c-2(a)(1) and (3), it requires a total of 24,140 hours.[14]

The Commission staff estimates that on average, each fund group requests shareholder information once a week, and gives instructions regarding the restriction of shareholder trades every day, for a total of 417 responses related to information sharing systems per fund group

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12 This estimate is based on the following calculation: (40 fund groups × 400 hours = 16,000 hours).

13 This estimate is based on the following calculation: (10 minutes × 669 fund groups = 6690 minutes); (6690 minutes/ 60 = 112 hours).

each year, and a total 278,973 responses for all fund groups annually.[15] In addition, the staff estimates that funds make 117 responses related to board determinations, 2007 responses related to new intermediaries of existing fund groups, 4000 responses related to new fund group information sharing agreements, and 669 responses related to recordkeeping, for a total of 6793 responses related to the other requirements of rule 22c-2. Therefore, the Commission staff estimates that the total number of responses is 285,766 (278,973 + 6793 = 285,766). The Commission staff estimates that the total hour burden for rule 22c-2 is 25,661 hours.[16]

Rule 22c-2 requires funds to enter into information sharing agreements with their intermediaries that enable funds to, upon request (i) be provided certain information regarding shareholders and their trades that are held through a financial intermediary or an indirect intermediary, and (ii) require the intermediary to execute instructions from the fund restricting or prohibiting further purchases or exchanges by shareholders that violate the fund's frequent trading policies. As a result of this requirement, some funds and intermediaries have had to develop and maintain information sharing, monitoring, and order execution systems (collectively "information sharing systems"). In general, costs related to these information-sharing systems are borne at the fund group level.

The Commission understands that all currently operating funds and intermediaries have either developed information systems themselves or purchased them from third parties.

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14 This estimate is based on the following calculation: (8028 hours + 16,000 hours + 112 hours = 24,140 hours).

15 This estimate is based on the following calculations: (52 + 365 =417); (417 × 669 fund groups = 278,973).

16 This estimate is based on the following calculation: (1521 hours (board determination) + 24,140 hours (information sharing agreements) = 25,661 total hours).

However, these funds and intermediaries also incur certain ongoing costs related to these systems' maintenance and operation. The Commission staff understands that various organizations have developed, enhancements to their systems that allow funds and intermediaries to share the information required by the rule without developing or maintaining systems of their own. Other organizations have developed "22c-2 solution" systems that funds may lease. The Commission staff understands that most funds and intermediaries use these outside systems. In general, the staff estimates that the typical charges involved in operating and maintaining information sharing systems average 25 cents for every 100 account transactions requested. These systems generally also provide analytics, spreadsheets, and other tools designed to enable funds to analyze the data presented, as well as communication tools to process fund instructions regarding the restrictions and prohibitions they may request. Commission staff estimates that the costs of developing, maintaining and operating information systems for funds and intermediaries that do not use outside provider's systems is comparable to the costs charged by outside providers.[17] The Commission staff estimates that, on average, each fund group requests information for 100,000 transactions each week, incurring costs of $250 weekly, or $13,000 a year.[18] In addition, the Commission staff estimates that funds pay access fees to use these information sharing systems (or comparable internal costs) of approximately $30,000 each year. The Commission staff therefore estimates that a fund group would typically incur approximately

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17 We include the burden for funds that develop and operate these information sharing systems internally rather than purchasing them from third parties as a cost rather than as an hourly burden because Commission staff understands that, even when developing these systems themselves, funds generally either use independent contractors or hire new personnel, and thereby incur this burden as a cost, not an hourly expenditure.

18 This estimate is based on the following calculations: (100,000 transaction requests × 0.0025¢ = $250); ($250 × 52 weeks = $13,000).

$43,000 in costs each year related to the operation and maintenance of information sharing systems required by rule 22c-2. The Commission staff has previously estimated that there are approximately 669 fund groups currently active, and therefore estimates that all fund groups incur a total of $28,767,000 in ongoing costs each year related to maintaining and operating information sharing systems.[19]

In addition, newly formed funds and fund groups advised by advisers who are new entrants would also need to incur certain additional costs related to the initial development or purchase of these information-sharing systems. Commission staff estimates that it requires approximately $100,000 to purchase or develop and implement such an information sharing system for the first time. Commission staff has previously estimated that approximately 40 funds or fund groups are formed each year managed by new advisers, and therefore estimates that all these funds would incur total costs of approximately $4,000,000.[20] Therefore the staff estimates that the total costs related to rule 22c-2 would be approximately $32,767,000 ($28,767,000 + $4,000,000 = $32,767,000).

Responses provided to the Commission will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. Responses provided in the context of the Commission's examination and oversight program are generally kept confidential. Complying with the information collections of rule 22c-2 is mandatory for funds that redeem their shares within 7 days of purchase. An

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19 This estimate is based on the following calculation: (669 fund groups × $43,000 = $28,767,000).

20 This estimate is based on the following estimate: ($100,000 × 40 new fund groups = $4,000,000).

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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency'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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: PRA_Mailbox@sec.gov .

Kevin M. O’Neill
Deputy Secretary

November 7, 2011

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