



## **SECURITIES AND EXCHANGE COMMISSION**

### **Submission for OMB Review; Comment Request**

Upon Written Request, Copies Available From  
Securities and Exchange Commission  
Office of FOIA Services  
100 F Street, NE  
Washington, DC 20549-2736

New Collection: Rule 139b

OMB Control No. New Collection, SEC File No. 270-815

Notice is hereby given that the Securities and Exchange Commission (the "Commission") has, in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. 3501 et seq.) ("PRA"), submitted a sponsored information collection request ("ICR") to the Office of Management and Budget ("OMB") for review and clearance for the collection of information associated with the new Rule 139b (17 CFR 230.139b) under the Securities Act of 1933 (15 U.S.C. 77a et seq.) ("Securities Act") that was adopted by the Commission on November 30, 2018.\1\ The title for this collection of information is: "Rule 139b Disclosure of Standardized Performance."

As directed by the Fair Access to Investment Research Act of 2017 (Pub. L. 115-66, 131 Stat. 1196 (2017) (the "FAIR Act"), the Commission adopted new rule 139b under the Securities Act to extend the safe harbor under rule 139 to a "covered investment fund research report." Specifically, new rule 139b provides a safe harbor to a broker-dealer who publishes or distributes in the regular course of its business research reports concerning one or more "covered investment fund(s)" while participating in the distribution of a covered investment fund's securities.

In the Proposing Release, we solicited comment on whether rule 139b should include a standardized performance disclosure requirement.\2\ In response to comments received, we have decided to adopt such a requirement.\3\ We believe that standardized performance presentation is an appropriate requirement because investors tend to consider fund performance a significant factor in evaluating or comparing investment companies, and the requirement addresses potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N-2. Performance measures calculated by broker-dealers are not required to be kept

confidential and there is no mandatory retention period. We anticipate that compliance with these performance measures for each fund discussed in a research report, and for which the performance measures apply, would increase compliance costs for broker-dealers seeking to publish or distribute a covered investment fund research report.

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\1\ See Release No. 33-10580 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] ("Adopting Release"). New rule 139b will be effective on January 14, 2019.

\2\ See Covered Investment Fund Research Reports, Securities Act Release No. 10498 (May 23, 2018) [83 FR 26788 (June 8, 2018)] ("Proposing Release") at 26803-04.

\3\ See Adopting Release, *supra* note I, at Section II.C.

It is difficult to provide estimates of the burdens and costs for those broker-dealers that will include performance information in a rule 139b research report. As discussed above, this is difficult to estimate because current data collected does not reflect the affiliate exclusion, does not include the entire universe of covered investment funds, and it is uncertain what percentage of communications currently filed as rule 482 advertising prospectuses (or rule 34b-1 supplemental sales materials) will instead be published in reliance of rule 139b, as covered investment fund research reports.\4\ For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b-1 communications currently filed by broker-dealers with FINRA (approximately 65,000) could be considered as rule 139b covered investment fund research reports. We estimate that broker-dealers will publish annually 6,500 (10% of 65,000) covered investment fund research reports. Moreover, we assume for purposes of the PRA that all estimated rule 139b research reports will include fund performance information. We further estimate that 1,417 broker-dealers would likely be respondents to the collection of information with a frequency of 4.6 responses per year.\5\ We further estimate that 50% of these broker-dealers will have experience in complying with standardized performance requirements under rule 482. For the 50% of this subset of broker-dealers that do not have experience with complying with rule 482, we estimate that there will be a one-time implementation cost for each broker-dealer of 5 internal burden hours. Additionally, we estimate that each research report will require 3 hours of ongoing internal burden hours by a broker-dealers' personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be 13.8 internal burden hours.\6\ Accordingly, we estimate that the standardized performance presentation requirements will result in an average annual hour burden of about 16.3 hours per broker-dealer\7\ in the first year of compliance and about 13.8 hours per broker-dealer for each of the next two years. Amortized over three years, the average annual hour burden will be about 14.63 hours per broker-dealer.\8\

In sum, we estimate that rule 139b's requirements will impose a total annual internal hour burden of 20,731 hours on broker-dealers.\9\ We do not think there is an external cost burden associated with this collection of information.

This information collection is subject to the PRA. If approved, responses to the new collection of information requirement would not be mandatory for broker-dealers seeking to rely upon rule 139b but would be necessary for those broker-dealers that would like to provide performance information in their covered investment fund research reports. Responses to the information collections will not be kept confidential.

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\4\ See Adopting Release, supra note 1, n. 413 and accompanying paragraph.

\5\ See Adopting Release, supra note 1, n. 414 and accompanying text.  
6,500 covered investment fund research reports /1,417 broker-dealers  
= 4.6 annual responses per broker-dealer.

\6\ 4.6 annual responses per broker-dealer x 3 internal burden hours =  
13.8  
annual internal burden hours per broker-dealer.

\7\ (50% of \* 13.8 hours ongoing compliance) + (50% \* (13.8 hours ongoing  
compliance + 5 hours of initial compliance hours)).

\8\ ((16.3 internal burden hours in year 1) + (13.8 internal burden hours  
in year 2) +(13.8 internal burden hours in year 3))/3.

\9\ 14.63 annualized burden hours \* 1,417 broker-dealers.

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 public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street, NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

**Dated:** November 13, 2019.

**Jill M. Peterson,**  
*Assistant Secretary.*

[FR Doc. 2019-24971 Filed: 11/19/2019 8:45 am; Publication Date: 11/20/2019]