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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-259, OMB Control No. 3235-0269]

Proposed Collection; Comment Request

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

Extension: Rule 17f-5

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f-5 (17 CFR 270.17f-5) under the Investment Company Act of 1940 [15 U.S.C. 80a] (the “Act”) governs the custody of the assets of registered management investment companies (“funds”) with custodians outside the United States. Under rule 17f-5, a fund or its foreign custody manager (as delegated by the fund’s board) may maintain the fund’s foreign assets in the care of an eligible fund custodian under certain conditions. If the fund’s board delegates to a foreign custody manager authority to place foreign assets, the fund’s board must find that it is reasonable to rely on each delegate the board selects to act as the fund’s foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund’s assets are placed with a foreign custodian and when any material change occurs in the fund’s custody arrangements. The delegate must agree to exercise reasonable care, prudence,

and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the performance of the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f-5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,¹ and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the

¹ See section 17(f) of the Act. 15 U.S.C. 80a-17(f).

adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.²

Commission staff estimates that each year, approximately 90 registrants³ could be required to make an average of one response per registrant under rule 17f-5, requiring approximately 2.5 hours of board of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule is up to approximately 225 hours (90 registrants x 2.5 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians⁴ are required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response will take approximately 270 hours, requiring approximately 1080 total hours annually per custodian (270 hours x 4 responses per custodian). The total annual burden associated with these requirements of the rule is approximately 16,200 hours (15 global custodians x 1080 hours per custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f-5 is estimated to be up to 16,425 hours (225 + 16,200). The total annual cost of burden hours is

² The staff believes that subcustodian monitoring does not involve “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3520) (“Paperwork Reduction Act”).

³ This figure is an estimate of the number of new funds each year, based on data reported by funds for 2017, 2018, and 2019. In practice, not all funds will use foreign custody managers. The actual figure therefore may be smaller.

⁴ This estimate is based on staff research.

estimated to be \$4,779,225 (225 hours x \$4,465/hour for board of director's time + (16,200 hours x \$233/hour for a trust administrator's time)).⁵ Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

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

Written comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has 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 in writing within 60 days of this publication.

⁵ Based on fund industry representations, the staff estimated in 2014 that the average cost of board of director time, for the board as a whole, was \$4,000 per hour. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately \$4,465 per hour. The \$233/hour figure for a trust administrator is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

Please direct your written comments to David Bottom, 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.

Dated: April 28, 2020.

J. Matthew DeLesDernier,
Assistant Secretary.

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