



This document is scheduled to be published in the Federal Register on 09/08/2020 and available online at federalregister.gov/d/2020-19724, and on govinfo.gov

8011-01P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-522; OMB Control No. 3235-0586]

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 38a-1

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 38a-1 (17 CFR 270.38a-1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (“Investment Company Act”) is intended to protect investors by fostering better fund compliance with securities laws. The rule requires every registered investment company and business development company (“fund”) to: (i) adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the fund, including procedures for oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund; (ii) obtain the fund board of directors’ approval of those policies and procedures; (iii) annually review the adequacy of those policies

and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation; (iv) designate a chief compliance officer to administer the fund's policies and procedures and prepare an annual report to the board that addresses certain specified items relating to the policies and procedures; and (v) maintain for five years the compliance policies and procedures and the chief compliance officer's annual report to the board.

The rule contains certain information collection requirements that are designed to ensure that funds establish and maintain comprehensive, written internal compliance programs. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' compliance programs.

While Rule 38a-1 requires each fund to maintain written policies and procedures, most funds are located within a fund complex. The experience of the Commission's examination and oversight staff suggests that each fund in a complex is able to draw extensively from the fund complex's "master" compliance program to assemble appropriate compliance policies and procedures. Many fund complexes already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop or revise policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations.

There are approximately 4,093 funds subject to Rule 38a-1. Among these funds, 101 were newly registered in the past year. These 101 funds, therefore, were required to adopt and document the policies and procedures that make up their compliance programs. Commission staff estimates that the average annual hour burden for a fund to adopt and document these policies and procedures is 105 hours. Thus, we estimate that the aggregate annual burden hours associated with the adoption and documentation requirement is 10,605 hours.

All funds are required to conduct an annual review of the adequacy of their existing policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation. In addition, each fund chief compliance officer is required to prepare an annual report that addresses the operation of the policies and procedures of the fund and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, any material changes to the policies and procedures recommended as a result of the annual review, and certain compliance matters that occurred since the date of the last report. The staff estimates that each fund spends 49 hours per year, on average, conducting the annual review and preparing the annual report to the board of directors. Thus, we estimate that the annual aggregate burden hours associated with the annual review and annual report requirement is 200,557 hours.

Finally, the staff estimates that each fund spends 6 hours annually, on average, maintaining the records required by proposed Rule 38a-1. Thus, the aggregate annual burden hours associated with the recordkeeping requirement is 24,558 hours.

In total, the staff estimates that the aggregate annual information collection burden of Rule 38a-1 is 235,720 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is based on communications with industry representatives, and is not derived from a comprehensive or even a representative survey or study. Responses will not be kept confidential. 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.

Written comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information has practical utility; (ii) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) 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 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: September 1, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-19724 Filed: 9/4/2020 8:45 am; Publication Date: 9/8/2020]