

Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 01-19945 Filed 8-8-01; 8:45 am]

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RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

- (1) *Collection title:* Employer Service and Compensation Reports.
- (2) *Form(s) submitted:* UI-41, UI-41a.
- (3) *OMB Number:* 3220-0070.
- (4) *Expiration date of current OMB clearance:* 9/30/2001.
- (5) *Type of request:* Revision of a currently approved collection.
- (6) *Respondents:* Business or other for-profit.
- (7) *Estimated annual number of response:* 3000.
- (8) *Total annual responses:* 0.
- (9) *Total annual reporting hours:* 400.
- (10) *Collection description:* The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB reviewer, Marcie Brown (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 3a-4, SEC File No. 270-401, OMB Control No. 3235-0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 3a-4 under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" and "mutual fund wrap" programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. Some of these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a-4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a-4 are not required to register under the Investment Company Act or comply with the Act's requirements.¹ These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's

¹ Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31, 1997)] ("Adopting Release"). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. See 17 CFR 270.3a-4, introductory note.

provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a-4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor² (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.³ In addition, the sponsor (or its designee) annually must contact the client to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) also must notify the client quarterly, in writing, to contact the sponsor (or the designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.⁴

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

Rule 3a-4 is intended primarily to provide guidance regarding the status of investment advisory programs under the Investment Company Act. The rule is not intended to create a presumption about a program that is not operated according to the rule's guidelines.

The requirement that the sponsor (or its designee) obtain information about the client's financial situation and investment objectives when the account

² For purposes of rule 3a-4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

³ Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

⁴ The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account.

Maintaining current information enables the portfolio manager to evaluate the client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure the client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that approximately 70 wrap fee and mutual fund wrap programs administered by 56 program sponsors use the procedures under rule 3a-4.⁵ Although it is impossible to determine the exact number of clients that participate in investment advisory programs, as estimate can be made by dividing total assets by the minimum account requirement (\$395.1 billion⁶ divided by \$42,500),⁷ for a total of 9,296,471 clients. Additionally, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 1996 through 2000, by the minimum account requirement (\$17.4 billion divided by \$42,500), for an average annual number of new accounts of 409,412.⁸

The Commission staff estimates that each program sponsor spends approximately one hour annually in preparing, conducting an/or reviewing annual interviews for each continuing client; and one hour preparing and mailing quarterly account activity statements, including the notice to update information to each client. Based on the foregoing, the Commission staff therefore estimates the total annual burden of the rule's paperwork

requirements for all program sponsors to be 14,149,412.5 hours. This represents an increase of 12,020,746 hours from the prior estimate of 2,128,666.5 hours. The increase results from an increase in the amount of assets managed under investment advisory programs, a reduction in the average minimum account requirement from \$100,000 to \$42,500 and the resulting increase in the estimated number of clients in those programs.

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.

Compliance with the collection of information requirements of the rule is necessary to obtain the relying on the rule's safe harbor. Nevertheless, rule 3a-4 is a nonexclusive safe harbor, and a program that does not comply with the rule's collection of information requirements does not necessarily meet the Investment Company Act's definition of investment company. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 31, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-19931 Filed 8-08-01; 8:45 am]

BILLING CODE 8610-01-M

Rule 8c-1, SEC File No. 270-455, OMB Control No. 3235-0514

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 ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 8c-1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to rule 8c-1, respondents must collect information necessary to prevent the hypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 231 respondents per year (*i.e.*, broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 5,198 hours to comply with the rule. Each of these approximately 231 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 10,395 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 5,198 burden hours. The approximate cost per hour is \$20, resulting in a total cost of compliance for the respondents of \$103,960 (5,198 hour @ \$20 per hour).

The retention period for the recordkeeping requirement under Rule 8c-1 is three years. The recordkeeping requirement under this Rule is

⁵ See the Cerulli Report, The Market Update: The Managed Accounts and Wrap Industry 60 (2000) (statistical information on wrap fee and mutual fund wrap programs).

⁶ See *id.* at 56 (estimating amount of assets in wrap fee and mutual fund wrap programs).

⁷ See *id.* (estimating the average minimum account requirements).

⁸ The requirement for initial client contact and evaluation is not a recurring obligation, but only occurs when the account is opened. The estimated annual hourly burden is based on the average number of new accounts opened each year.

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