

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

[Extension: Rule 31a-2, SEC File No. 270-174, OMB Control No. 3235-0179; Rule 32a-4, SEC File No. 270-473, OMB Control No. 3235-0530]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549-0004.

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

Section 31(a)(1) of the Investment Company Act of 1940 (the "Act") requires registered investment companies ("funds") and certain principal underwriters, broker-dealers, investment advisers and depositors of funds to maintain and preserve records as prescribed by Commission rules.<sup>1</sup> Rule 31a-1 specifies the books and records each of these entities must maintain.<sup>2</sup> Rule 31a-2, which was adopted on April 17, 1944, specifies the time periods that entities must retain books and records required to be maintained under rule 31a-1.<sup>3</sup>

Rule 31a-2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a-1(b)(1)-(4).<sup>4</sup>

2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years: (a) all books and records required under rule 31a-1(b)(5)-(12);<sup>5</sup> (b) all vouchers,

memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates and all schedules that support each computation of net asset value of fund shares; and (c) any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors.

3. Every underwriter, broker or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act ("section 17") for the periods established in those rules.

4. Every depositor of any fund, and every principal underwriter of any fund other than a closed-end fund, must preserve for at least six years records required to be preserved by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be maintained by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 ("section 204") for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on (i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of this section. The investment company, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.<sup>6</sup>

investment adviser, and memoranda identifying persons, committees or groups authorizing the purchase or sale of securities for the fund.

<sup>6</sup> In addition, the fund, or whoever maintains the documents for the fund must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request: (A) a legible, true, and complete copy of the record in the medium and

The Commission periodically inspects the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. The Commission staff spends a significant portion of their time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a-1 and to be preserved by rule 31a-2.

There are approximately 4,500 active investment companies registered with the Commission as of April 30, 2002, all of which are required to comply with rule 31a-2. Based on conversations with representatives of the fund industry, the Commission staff estimates that each fund spends about 210 hours per year complying with rule 31a-2, for a total annual burden for the fund industry of approximately 945,000 hours.<sup>7</sup>

The Commission staff estimates the average cost of preserving books and records required by rule 31a-2, to be approximately \$.000035 per \$1.00 of net assets per year.<sup>8</sup> With the total net assets of all funds at about \$7 trillion,<sup>9</sup> the staff estimates that compliance with rule 31a-2 costs the fund industry approximately \$245 million per year.<sup>10</sup>

format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section. In the case of records retained on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

<sup>7</sup> Commission staff surveyed several fund representatives to determine the current burden hour estimate. The staff found that an average fund spends approximately 210 hours per annum complying with rule 31a-2 (210 hours × 4,500 registered investment companies = 945,000). Although the Commission did not change its collection of information requirements in rule 31a-2, the fund representatives' estimates reflect an annual increase of 182 hours per fund over the burden of 27.8 hours estimated in the 1998 PRA submission. The change in annual hours is based upon an increase in the estimated time each fund spends complying with the rule.

<sup>8</sup> The staff estimated the annual cost of preserving the required books and records by identifying the annual costs for several funds and then relating this total cost to the average net assets of these funds during the year. The staff estimates that the annual cost of preserving records is \$70,000 per fund; the funds queried in support of this analysis had an average asset base of approximately \$2 billion (70,000/2 billion=.000035).

<sup>9</sup> See Investment Company Institute, 2002 Mutual Fund Fact Book, at 61.

<sup>10</sup> This estimate is based on the annual cost per dollar of net assets of the average fund as applied

Continued

<sup>1</sup> 15 U.S.C. 80a-30(a)(1).

<sup>2</sup> 17 CFR 270.31a-1.

<sup>3</sup> 17 CFR 270.31a-2.

<sup>4</sup> 17 CFR 270.31a-1(b)(1)-(4). These include, among other records, journals detailing daily purchases and sales of securities or contracts to purchase and sell securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting, separately for each portfolio security as of the trade date all "long" and "short" positions carried by the fund for its own account, and corporate charters, certificates of incorporation and by-laws.

<sup>5</sup> 17 CFR 270.31a-1(b)(5)-(12). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, all other portfolio purchases, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the

The Commission staff estimates, however, based on past conversations with representatives of the fund industry, that funds could spend as much as half of this amount (\$122.4 million) to preserve the books and records that are necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns.

Rule 32a-4 [17 CFR 270.32a-4] is entitled "Independent Audit Committees." The rule exempts a fund from the requirements of section 32(a)(2) of the Investment Company Act that shareholders ratify or reject the selection of the independent public accountant of a registered management company or registered face-amount certificate company if the fund has an audit committee composed wholly of independent directors.

Instead of relying on rule 32a-4, a fund could seek ratification or rejection by shareholders of the selection of its independent public accountant at each annual meeting. Under the rule, a fund is exempt from having to seek shareholder approval of its independent public accountant, if (i) the fund's board of directors establishes an audit committee composed solely of independent directors with responsibility for overseeing the fund's accounting and auditing processes,<sup>11</sup> (ii) the fund's board of directors adopts an audit committee charter setting forth the committee's structure, duties, powers and methods of operation, or sets out similar provisions in the fund's charter or bylaws,<sup>12</sup> and (iii) the fund maintains a copy of such an audit committee charter permanently in an easily accessible place.<sup>13</sup>

As conditions of relying on rule 32a-4, a fund's board of directors must adopt an audit committee charter and must preserve that charter, and any modifications to the charter, permanently in an easily accessible place. The information collection requirement in rule 32a-4 enables the Commission to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the rule. Commission staff estimates that there are approximately 3,700 management investment companies and face-amount certificate companies that could rely on the rule. We believe that approximately 9.7 percent (360) of those funds have taken advantage of the

exemption since adoption of the rule, and approximately 2.7 % (100) of the funds that have not already done so choose to rely on the rule each year. For each of those funds choosing for the first time to rely on the rule, we estimate that the adoption of the audit committee charter requires, on average, 1 hour of directors' time, 2.5 hours of professional time and 1 hour of support staff time, for a total one-time burden of 4.5 hours, and an estimated total one-time cost of \$555.40, resulting in an annual aggregate time burden of 450 hours and an annual aggregate cost of \$55,540.<sup>14</sup>

In addition to the hour burden described above, rule 32a-4 imposes certain costs on those funds that choose to rely on the exemption. These costs are minimal and are justified by the relief provided by the exemption. We estimate that each of the approximately 360 funds currently relying on the rule is required to spend approximately .5 hours annually to comply with the requirement that it preserve permanently its audit committee charters, for an additional annual hour burden of 180 hours, and an additional annual cost for all funds of \$12,439.20.<sup>15</sup>

These estimates of average costs are 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. 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.

General comments regarding the above information should be directed 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) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology,

<sup>14</sup> To calculate this cost, the Commission staff used an average hourly wage rate of \$300 per hour for directors, an average hourly wage rate of \$96.16 per hour for professionals, and an average hourly wage rate of \$15 per hour for support staff ((100 x 1 x \$300/hour) + (100 x 2.5 x \$96.16/hour) + (100 x 1 x \$15/hour) = \$55,540). See Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2001 (Oct. 2001).

<sup>15</sup> In calculating this annual cost, the Commission staff estimated that one-third of the annual hour burden (60 hours) would be incurred by support staff with an average hourly wage rate of \$15 per hour, and two-thirds of the annual burden (120 hours) would be incurred by professionals with an average hourly wage rate of \$96.16 per hour ((60 x \$15/hour) + (120 x \$96.16/hour) = \$12,439.20).

Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 29, 2002.

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46739; File No. SR-NASD-2002-146]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rule 3011 To Require Members To Identify and Provide Contact Information for Their Anti-Money Laundering Compliance Persons

October 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 22, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD rule 3011 to require each member to provide to NASD contact information for the individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the member's anti-money laundering ("AML") compliance program ("AML Program"). Below is the text of the proposed rule change. New text is in italics.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

to the net assets of all funds (\$7 trillion x .000035 = \$244.7 million).

<sup>11</sup> Rule 32a-4(a).

<sup>12</sup> Rule 32a-4(b).

<sup>13</sup> Rule 32a-4(c).