

answer questions. We estimate the total number of hours to be 200.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606-8358, fax (202) 418-3251 or e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include your complete mailing address with your request.

**DATES:** Comments on this proposal should be received within five (5) calendar days from the date of this publication. We are requesting OMB to take action within ten (10) calendar days from the close of this **Federal Register** Notice.

**ADDRESSES:** Send or deliver comments to: U.S. Office of Personnel Management, Employment Service, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415-9820, E-mail: [ratimmin@opm.gov](mailto:ratimmin@opm.gov); and Stuart Shapiro, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, NW., Room 10235, Washington, DC 20503. Office of Personnel Management.

**Kay Coles James,**  
*Director.*

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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 31a-1, SEC File No. 270-173, OMB Control No. 3235-0178; rule 18f-3, SEC File No. 270-385, OMB Control No. 3235-0441; rule 498, SEC File No. 270-435, OMB Control No. 3235-0488; rule 34b-1, SEC File No. 270-305,

OMB Control No. 3235-0346.

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 on the previously approved collections of information discussed below.

Rule 31a-1 (17 CFR 270.31a-1) under the Investment Company Act of 1940 (the "Act") is entitled "Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies." Rule 31a-1 requires registered investment companies ("funds"), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 30 of the Act (15 U.S.C. 80a-30) and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws. The Commission periodically inspects the operations of funds to insure their compliance with the provisions of the Act and the rules thereunder. The books and records required to be maintained by rule 31a-1 constitute a major focus of the Commission's inspection program.

There are approximately 4,500 investment companies registered with the Commission, all of which are required to comply with rule 31a-1. For purposes of determining the burden imposed by rule 31a-1, the Commission staff estimates that each registered investment company is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a-1. Based on conversations with fund representatives, it is estimated that rule 31a-1 imposes an average burden of approximately 1,400 hours annually per series for a total of 5,600 annual hours per investment company. The estimated total annual burden for all 4,500 investment companies subject to the rule therefore is approximately 25,200,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the

requirements of rule 31a-1, most of the records created pursuant to the rule are the type that generally would be created as a matter of normal business custom and to prepare financial statements.

The collection of information required by rule 31a-1 is mandatory. Responses will not be kept confidential. The records required by rule 31a-1 are required to be preserved pursuant to rule 31a-2 under the Investment Company Act (17 CFR 270.31a-2). Rule 31a-2 requires that certain of these records be preserved permanently, and that others be preserved six years from the end of the fiscal year in which any transaction occurred. In both cases, the records should be kept in an easily accessible place for the first two years.

Section 18(f)(1)<sup>1</sup> of the Act<sup>2</sup> prohibits registered open-end management investment companies from issuing any senior security. Rule 18f-3 under the Act<sup>3</sup> exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a "multiple class fund") if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare and fund directors must approve a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges ("rule 18f-3 plan").<sup>4</sup> Approval of the plan must occur before the fund issues any shares of multiple classes, and whenever the fund materially amends the plan. In approving the plan, a majority of the fund board, including a majority of the fund's independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f-3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and

<sup>1</sup> 15 U.S.C. 80a-18(f)(1).

<sup>2</sup> 15 U.S.C. 80a.

<sup>3</sup> 17 CFR 270.18f-3.

<sup>4</sup> Rule 18f-3(d).

the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

There are approximately 516 multiple class funds.<sup>5</sup> Based on a review of typical rule 18f-3 plans, the Commission's staff estimates that the 516 funds together make an average of 258 responses each year to prepare and approve a written rule 18f-3 plan, requiring approximately 18.5 hours per response, and a total of 4,773 burden hours per year in the aggregate.<sup>6</sup> Preparation of the rule 18f-3 plan may require 11 hours of the services of an attorney or accountant, at a cost of approximately \$130 per hour for professional time, and approval of the plan may require 1.5 hours of the attention of each of 5 directors, at a cost of approximately \$500 per hour per director. The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately \$1,336,440 ((11 hours × 1 professional × 258 responses × \$130) + (1.5 hours × 5 directors × 258 responses × \$500)).

The estimated annual burden of 4,773 hours represents an increase of 3,260.5 hours over the prior estimate of 1,512.5 hours. The increase in burden hours is attributable to more accurate estimates of the burden hours that reflect additional time spent by professionals and time spent by directors. The estimated number of multiple class funds has decreased, however, from 550 to 516.

Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 18f-3. Responses will not be kept confidential.

Rule 498 of the Securities Act of 1933 (17 CFR 230.498) permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) ("funds") to provide investors with a "profile" that contains a summary of key information about a fund, including the fund's

investment objectives, strategies, risks and performance, and fees, in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission 30 days before first use. Such a filing allows the Commission to review the profile for compliance with rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 16 initial profiles and 316 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 20 portfolios filed annually on initial profiles and 395 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under rule 498 is 4,450, representing a decrease of 2,660 hours from the prior estimate of 7,110. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The collection of information under rule 498 is voluntary. The information provided by rule 498 is not kept confidential.

Rule 34b-1 under the Investment Company Act (17 CFR 270.34b-1) governs sales material that accompanies or follows the delivery of a statutory prospectus ("sales literature"). Rule 34b-1 deems to be materially misleading any investment company sales literature, required to be filed with the Commission by section 24(b) of the Investment Company Act (15 U.S.C. 80a-24(b)),<sup>7</sup> that includes performance data unless it also includes the

appropriate uniformly computed data and the legend disclosure required in advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482). Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

The Commission estimates that respondents file approximately 37,000 responses with the Commission, which include the information required by rule 34b-1. The burden from rule 34b-1 requires slightly more than 2.4 hours per response resulting from creating the information required under rule 34b-1.<sup>8</sup> The total burden hours for rule 34b-1 is 89,143 per year in the aggregate (37,000 responses × 2.4092702 hours per response).

The collection of information under rule 34b-1 is mandatory. The information provided under rule 34b-1 is not kept confidential.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. 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, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, 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: January 28, 2003.

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>5</sup> This estimate is based on data from form N-SAR, the semi-annual report that funds file with the Commission.

<sup>6</sup> The estimate reflects the assumption that each multiple class fund prepares and approves a rule 18f-3 plan every two years when issuing a new class or amending a plan (or that 258 of all 516 funds prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 11 hours per plan (or 2,838 hours for 258 funds annually), and the time required to approve a plan is an additional 1.5 hours per director per plan (or 1,935 hours for 258 funds annually (assuming five directors per fund)).

<sup>7</sup> Sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Investment Company Act upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. See rule 24b-3 under the Investment Company Act (17 CFR 270.24b-3).

<sup>8</sup> The estimated burden per response is 2.9 hours for 686 responses and 2.4 hours for the remaining, giving a more exact weighted average burden per response of approximately 2.4092702.