

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 R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA\_Mailbox@sec.gov*.

Dated: March 5, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; 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") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 3a-4 (17 CFR 270.3a-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.<sup>1</sup> These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's 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 sponsor<sup>2</sup> (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.<sup>3</sup> 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.<sup>4</sup>

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 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 program 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 64 wrap fee and mutual fund wrap programs administered by 56 program sponsors use the procedures under rule 3a-4.<sup>5</sup> Although it is impossible to determine the exact number of clients that participate in investment advisory programs, an estimate can be made by dividing total assets by the industry average account

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

<sup>5</sup> These estimates are based on statistical information on wrap fee and mutual fund wrap programs provided by Cerulli Associates in 2003. We request comment on whether the number of wrap programs and program sponsors has changed.

size (\$345.5 billion<sup>6</sup> divided by \$126,202),<sup>7</sup> for a total of 2,737,675 clients. Additionally, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 2003 through 2006, by the average account size (\$57.7 billion divided by \$126,202), for an average annual number of new accounts of 457,204.<sup>8</sup>

The Commission staff estimates that each program sponsor spends approximately 1.25 hours annually in preparing, conducting and/or reviewing interviews for each new client; 30 minutes annually preparing, conducting and/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 4,449,415.5 hours. This represents a decrease of 2,063,087 hours from the prior estimate of 6,512,502.5 hours. The decrease results from a change in the method of computation for the number of clients that participate in these investment advisory programs. Previously, we have computed the number of clients based on the minimum account requirement for participation in these programs. For this estimate we computed the number of clients based on the industry average account size in these programs resulting in a decrease in the estimated number of clients in these investment advisory 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.

Written comments are invited on: (a) Whether the collections of information are 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 burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the

<sup>6</sup> See Cerulli Associates, *The Cerulli Edge: Managed Accounts Edition*, Advisors Issue 10 (3d quarter 2006).

<sup>7</sup> *Id.* at 13.

<sup>8</sup> 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.

information collected; and (d) ways to minimize the burdens of the collections 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 R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: March 5, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

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

#### Extension:

Form N-5, SEC File No. 270-172, OMB Control No. 3235-0169.

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") 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 ("OMB") for extension and approval.

Form N-5 (17 CFR 239.24 and 274.5)—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) Form N-5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 ("Securities Act"), and to register as an investment company under section 8 of the Investment Company Act of 1940 ("Investment Company

Act"). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N-5, the Commission would be unable to carry out the requirements of the Securities Act and the Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is one and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total of 352 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency'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. Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: March 5, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copy Available  
From: Securities and Exchange