

SUPPORTING STATEMENT
Rule 17a-6

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 17(a) of the Investment Company Act of 1940 (the “Act”) generally prohibits affiliated persons of a registered investment company (“fund”) from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls.¹ Rule 17a-6 permits a fund and a “portfolio² affiliate” (a company that is an affiliated person of the fund because the fund controls the company, or holds 5 percent or more of the company’s outstanding voting securities) to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions. A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (e.g., directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a-6 specifies certain interests that are not “financial interests,” including any interest that the fund’s board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 (“PRA”).³

¹ 15 U.S.C. 80a-17(a).

² 17 CFR 270.17a-6.

³ 44 U.S.C. 3501.

2. Purpose of the Information Collection

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is “material,” the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a-6 are intended to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director’s finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

3. Role of Improved Information Technology

To the extent the rule includes recordkeeping requirements, the Electronic Signatures in Global and National Commerce Act and the conforming amendments to recordkeeping rules under the Investment Company Act permit funds to maintain records electronically.

4. Efforts to Identify Duplication

Rule 31a-1 under the Investment Company Act requires fund boards to maintain board meeting minutes.⁴ Rule 17a-6 requires a fund’s board to record the basis for its finding in its meeting minutes. Funds, however, would not be required to retain duplicate records of the meeting minutes.

5. Effect on Small Entities

Rule 17a-6 is available for any transaction involving small entities, if the funds participating in the transaction comply with the conditions set forth in the rule. These

⁴ 17 CFR 270.31a-1.

requirements protect the interests of the funds and their shareholders from overreaching by fund affiliates. The rule does not disproportionately burden small entities. The Commission believes that it could not adjust the rule to lessen the burden on small entities of complying with the rule without jeopardizing the interests of investors in small entities.

6. Consequences of Less Frequent Collection

The information collection requirements in rule 17a-6 only arise when a prohibited participant may have a direct or indirect financial interest in a party to a principal transaction involving a fund and a portfolio affiliate of the fund. Less frequent information collection would impede the Commission's inspection staff's ability to monitor the board's oversight of otherwise prohibited principal transactions and would not be consistent with protecting fund shareholders from overreaching by fund affiliates.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

As noted above, the records required under rule 17a-6 also must be kept pursuant to rule 31a-1 of the Act. Rule 31a-2 addresses the record retention requirements for rule 31a-1 records, and the PRA justification for that rule explains the need for record retention in excess of three years.”⁵

8. Consultations Outside the Agency

⁵ The collection of information for rule 31a-2 is titled “Rule 31a-2 under the Investment Company Act; records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies,” displays OMB number 3231-0179, and expires on August 31, 2010.

The Commission requested public comment on the collection of information requirements in rule 17a-6 before it submitted this request for approval to the Office of Management and Budget. The Commission received no comments in response to this request.

More generally, the Commission and the staff at the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable. No issues of a sensitive nature are involved.

12. Estimate of Hour Burden

The following estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Based on analysis of past filings, Commission staff estimates that 148 funds are affiliated persons of 668 issuers as a result of the fund's ownership or control of the issuer's voting securities, and that there are approximately 1,000 such affiliate relationships. Based on staff discussions with a limited number of fund representatives, we estimate that funds currently do not rely on the exemption from the term "financial interest" with respect to any interest that the

fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no principal transactions under rule 17a-6 that will result in a collection of information.

The Commission requests authorization to maintain an inventory of one burden hour to ease future renewals of rule 17a-6's collection of information analysis should funds rely on this exemption to the term "financial interest" as defined in rule 17a-6.

13. Estimate of Total Annual Cost Burden

There is no annual cost burden associated with complying with the information collection requirements in rule 17a-6, aside from the cost of the burden hours discussed above.

14. Estimate of Cost to the Federal Government

Rule 17a-6 does not require that anything be filed with the Commission. Commission staff may, in the course of routine fund inspections, monitor compliance with the proposed amendments and additions.

15. Explanation of Changes in Burden

There is no change in the hour burden associated with rule 17a-6. We request authorization to maintain an inventory of one burden hour.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information is not published for statistical use.

17. Approval to not Display Expiration Date

The Commission is not seeking such approval.

18. Exceptions to Certification Requirement

The Commission is not seeking an exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable because the collection of information will not employ statistical methods.