

the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 581 burden hours annually.<sup>10</sup>

The staff estimates, therefore, that rule 10f-3 imposes an information collection burden of 5,665 hours.<sup>11</sup> This estimate does not include the time spent filing transaction reports on Form N-SAR, which is encompassed in the information collection burden estimate for that form.

The collection of information required by rule 10f-3 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. 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.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: August 20, 2012.

**Elizabeth M. Murphy,**  
Secretary.

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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 Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Rule 12b-1; SEC File No. 270-188; OMB Control No. 3235-0212.

<sup>10</sup> These estimates are based on the following calculations: (0.75 hours × 775 portfolios = 581 burden hours).

<sup>11</sup> This estimate is based on the following calculation: (1,850 hours + 1,233 hours + 1,200 hours + 600 hours + 581 hours + 201 hours = 5,665 total burden hours).

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

Rule 12b-1 under the Investment Company Act of 1940 (17 CFR 270.12b-1) permits a registered open-end investment company ("fund" or "mutual fund") to bear expenses associated with the distribution of its shares, provided that the mutual fund complies with certain requirements, including, among other things, that it adopt a written plan ("rule 12b-1 plan") and that it has in writing any agreements relating to the rule 12b-1 plan. The rule in part requires that (i) The adoption or material amendment of a rule 12b-1 plan be approved by the mutual fund's directors, including its independent directors, and, in certain circumstances, its shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b-1 plan; and (iii) the board, including the independent directors, consider continuation of the rule 12b-1 plan and any related agreements at least annually. Rule 12b-1 also requires mutual funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b-1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b-1 plan.

Rule 12b-1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions. The rule requires funds that use broker-dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.

The board and shareholder approval requirements of rule 12b-1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b-1

plan and, thus, are necessary for investor protection. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Based on information filed with the Commission by funds, Commission staff estimates that there are approximately 6,771 mutual fund portfolios that have at least one share class subject to a rule 12b-1 plan.<sup>1</sup> However, many of these portfolios are part of an affiliated group of funds, or mutual fund family, that is overseen by a common board of directors. Although the board must review and approve the rule 12b-1 plan for each fund separately, we have allocated the costs and hourly burden related to rule 12b-1 based on the number of fund families that have at least one fund that charges rule 12b-1 fees, rather than on the total number of mutual fund portfolios that individually have a rule 12b-1 plan.<sup>2</sup> Based on information filed with the Commission, the staff estimates that there are approximately 375 fund families with common boards of directors that have at least one fund with a rule 12b-1 plan.

Based on previous conversations with fund representatives, Commission staff estimates that for each of the 375 mutual fund families with a portfolio that has a rule 12b-1 plan, the average annual burden of complying with the rule is 425 hours. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's initial or

<sup>1</sup> This estimate is based on information from the Commission's NSAR database.

<sup>2</sup> This allocation is based on previous conversations with fund representatives on how fund boards comply with the requirements of rule 12b-1. Despite this allocation of hourly burdens and costs, the number of annual responses each year will continue to depend on the number of fund portfolios with rule 12b-1 plans rather than the number of fund families with rule 12b-1 plans. The staff estimates that the number of annual responses per fund portfolio will be four per year (quarterly, with the annual reviews taking place at one of the quarterly intervals). Thus, we estimate that funds will make 27,084 responses (6,771 fund portfolios × 4 responses per fund portfolio = 27,084 responses) each year.

annual consideration of whether to continue the plan.<sup>3</sup> We therefore estimate that the total hourly burden per year for all funds to comply with current information collection requirements under rule 12b-1, is 159,375 hours (375 fund families × 425 hours per fund family = 159,375 hours).

If a currently operating fund seeks to (i) adopt a new rule 12b-1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b-1 plan, rule 12b-1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy.<sup>4</sup> Based on previous conversations with fund representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b-1 plan. Funds typically hire outside legal counsel and proxy solicitation firms to prepare, print, and mail such proxies. The staff further estimates that the cost of each fund's proxy is \$32,174. Thus the total annual cost burden of rule 12b-1 to the fund industry is \$96,522 (3 funds requiring a proxy × \$32,174 per proxy).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collections of information required by rule 12b-1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. 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 control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and

Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: August 20, 2012.

**Elizabeth M. Murphy,**  
Secretary.

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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 Investor Education and Advocacy, Washington, DC. 20549-0213.

#### Extension:

Rule 204; SEC File No. 270-586; OMB Control No. 3235-0647.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 204 (17 CFR 242.204) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 204 requires that, subject to certain limited exceptions, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency it must immediately close out the fail to deliver position by purchasing or borrowing securities by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position. Rule 204 is intended to help further the Commission's goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission's goal of addressing potentially abusive "naked" short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization ("SRO") examiners upon request. The

information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a "collection of information" within the meaning of the Paperwork Reduction Act.

I. Allocation Notification Requirement: As of December 31, 2011, there were 4,695 registered broker-dealers. Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a broker-dealer has been allocated a portion of a fail to deliver position in an equity security and after the beginning of regular trading hours on the applicable close-out date, the broker-dealer has to determine whether or not that portion of the fail to deliver position was not closed out in accordance with Rule 204(a), we estimate that a broker-dealer will have to make such determination with respect to approximately 2.09 equity securities per day.<sup>1</sup> We estimate a total of 2,472,762 notifications in accordance with Rule 204(d) across all broker-dealers (that were allocated responsibility to close out a fail to deliver position) per year (4,695 broker-dealers notifying participants once per day<sup>2</sup> on 2.09 securities, multiplied by 252 trading days in a year). The total estimated annual burden hours per year will be approximately 395,642 burden

<sup>1</sup> As stated in the adopting release for Interim Final Temporary Rule 204T, the Commission's Office of Economic Analysis ("OEA") estimates that there are approximately 9,809 fail to deliver positions per settlement day. Across 4,695 broker-dealers, the number of securities per broker-dealer per day is approximately 2.09 equity securities. During the period from January to July 2008, approximately 4,321 new fail to deliver positions occurred per day. The National Securities Clearing Corporation ("NSCC") data for this period includes only securities with at least 10,000 shares in fails to deliver. To account for securities with fails to deliver below 10,000 shares, the figure is multiplied by a factor of 2.27. The factor is estimated from a more complete data set obtained from NSCC during the period from September 16, 2008 to September 22, 2008. It should be noted that these numbers include securities that were not subject to the close-out requirement of Rule 203(b)(3) of Regulation SHO. Exchange Act Release No. 58733 (Oct. 14, 2008), 73 FR 61706, 61718 n.107 (Oct. 17, 2008) ("Rule 204T Adopting Release").

<sup>2</sup> Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, we believe that a broker-dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

<sup>3</sup> We do not estimate any costs or time burden related to the recordkeeping requirements in rule 12b-1, as funds are either required to maintain these records pursuant to other rules or would keep these records in any case as a matter of business practice.

<sup>4</sup> In general, a fund adopts a rule 12b-1 plan before it begins operations. Therefore, the fund is not required to obtain the approval of its public shareholders because the fund's shares have not yet been offered to the public.