

Officers, and this process is not be affected by this proposed rule change.

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-CBOE-2017-017) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-259, OMB Control No. 3235-0269]

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE., Washington, DC 20549-2736.

Extension:  
Rule 17f-5.

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") requests for extension of the previously approved collections of information discussed below.

Rule 17f-5 (17 CFR 270.17f-5) under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act") governs the custody of the assets of registered management investment companies ("funds") with custodians outside the United States. Under rule 17f-5, a fund or its foreign custody manager (as delegated by the fund's board) may maintain the fund's foreign assets in the care of an eligible fund custodian under certain conditions. If the fund's board delegates to a foreign custody manager authority to place foreign assets, the fund's board must find that it is reasonable to rely on each delegate the board selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and

when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the performance of the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f-5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,<sup>1</sup> and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate

action if developing custody risks may threaten fund assets.<sup>2</sup>

Commission staff estimates that each year, approximately 97 registrants<sup>3</sup> could be required to make an average of one response per registrant under rule 17f-5, requiring approximately 2.5 hours of board of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule is up to approximately 243 hours (97 registrants × 2.5 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians<sup>4</sup> are required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response will take approximately 270 hours, requiring approximately 1080 total hours annually per custodian (270 hours × 4 responses per custodian). The total annual burden associated with these requirements of the rule is approximately 16,200 hours (15 global custodians × 1080 hours per custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f-5 is estimated to be up to 16,443 hours (243 + 16,200). The total annual cost of burden hours is estimated to be \$4,522,392 ((243 hours × \$4,144/hour for board of director's time) + (16,200 hours × \$217/hour for a trust administrator's time)).<sup>5</sup> Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

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

<sup>2</sup> The staff believes that subcustodian monitoring does not involve "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) ("Paperwork Reduction Act").

<sup>3</sup> This figure is an estimate of the number of new funds each year, based on data reported by funds for 2014, 2015, and 2016. In practice, not all funds will use foreign custody managers. The actual figure therefore may be smaller.

<sup>4</sup> This estimate is based on staff research.

<sup>5</sup> Based on fund industry representations, the staff estimated in 2014 that the average cost of board of director time, for the board as a whole, was \$4,000 per hour. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately \$4,144 per hour. The \$217/hour figure for a trust administrator is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See section 17(f) of the Act. 15 U.S.C. 80a-17(f).

the costs of Commission rules and forms.

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) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE., Washington, DC 20549 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: April 25, 2017.

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-312, OMB Control No. 3235-0354]

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:  
Rule 19b-1.

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 collection of information discussed below.

Section 19(b) of the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-19(b)) authorizes the Commission to regulate registered investment company ("fund") distributions of long-term capital gains made more frequently than once every twelve months. Accordingly, rule 19b-1 under the Act (17 CFR 270.19b-1) regulates the frequency of fund distributions of capital gains. Rule 19b-1(c) states that the rule does not apply to a unit investment trust ("UIT") if it is engaged exclusively in the business of investing in certain eligible securities

(generally, fixed-income securities), provided that: (i) The capital gains distribution falls within one of five categories specified in the rule<sup>1</sup> and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the "notice requirement").<sup>2</sup> Rule 19b-1(e) permits a fund to apply to the Commission for permission to distribute long-term capital gains that would otherwise be prohibited by the rule if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution.<sup>3</sup> An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

Commission staff estimates that five funds will file an application under rule 19b-1(e) each year.<sup>4</sup> The staff understands that if a fund files an application it generally uses outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The staff estimates that, on average, a fund's investment adviser would spend approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of \$433 per hour and 0.5 hours by an administrative assistant at a cost of \$74 per hour, and the fund's board of directors would spend an additional 1 hour at a cost of \$4,465 per hour, for a total of 5 hours.<sup>5</sup>

<sup>1</sup> 17 CFR 270.19b-1(c)(1).

<sup>2</sup> The notice requirement in rule 19b-1(c)(2) supplements the notice requirement of section 19(a) [15 U.S.C. 80a-19(a)], which requires any distribution in the nature of a dividend payment to be accompanied by a notice disclosing the source of the distribution.

<sup>3</sup> Rule 19b-1(e) also requires that the application comply with rule 0-2 [17 CFR 270.02] under the Act, which sets forth the general requirements for papers and applications filed with the Commission pursuant to the Act and rules thereunder.

<sup>4</sup> This estimate is based on the average number of applications filed with the Commission pursuant to rule 19b-1(e) in the prior three-year period.

<sup>5</sup> The estimate for assistant general counsels is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The estimate for administrative assistants is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff previously estimated in 2009 that the average cost of board of director time was \$4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average

Thus, the staff estimates that the annual hour burden of the collection of information imposed by rule 19b-1(e) would be approximately five hours per fund, at a cost of \$6017.50.<sup>6</sup> Because the staff estimates that, each year, five funds will file an application pursuant to rule 19b-1(e), the total burden for the information collection is 40 hours at a cost of \$30,087.50.<sup>7</sup>

Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b-1(c).

As noted above, Commission staff understands that funds that file an application under rule 19b-1(e) generally use outside counsel to prepare the application.<sup>8</sup> The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b-1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as \$400 per hour, based on information received from funds, intermediaries, and their counsel. The staff therefore estimates that the average cost of outside counsel preparation of the rule 19b-1(e) exemptive application is \$4,000.<sup>9</sup> Because the staff estimates that, each year, five funds will file an application pursuant to rule 19b-1(e), the total annual cost burden imposed by the exemptive application requirements of rule 19b-1(e) is estimated to be \$20,000.<sup>10</sup>

The Commission staff estimates that there are approximately 2,579 UITs<sup>11</sup> that may rely on rule 19b-1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b-1(c) once a year to make a capital gains distribution.<sup>12</sup> In

cost of board of director time is approximately \$4,465.

<sup>6</sup> This estimate is based on the following calculations: \$1515.50 (3.5 hours × \$433 = \$1515.50) plus \$37 (0.5 hours × \$74 = \$37) plus \$4465 equals \$6017.50 (cost of one application).

<sup>7</sup> This estimate is based on the following calculation: \$6017.50 (cost of one application) multiplied by 5 applications = \$30,087.50 total cost.

<sup>8</sup> This understanding is based on conversations with representatives from the fund industry.

<sup>9</sup> This estimate is based on the following calculation: 10 hours multiplied by \$400 per hour equals \$4,000.

<sup>10</sup> This estimate is based on the following calculation: \$4,000 multiplied by five (funds) equals \$20,000.

<sup>11</sup> See 2016 Investment Company Fact Book, Investment Company Institute, available at [https://www.ici.org/pdf/2016\\_factbook.pdf](https://www.ici.org/pdf/2016_factbook.pdf).

<sup>12</sup> The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years and UITs. UITs may distribute capital gains biannually, annually, quarterly, or at other