SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW, Washington, DC 20549

Extension: Rule 3a–4, SEC File No. 270–401, OMB Control No. 3235–0459; Form N–8B–2, SEC File No. 270–186, OMB Control No. 3235–0186

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'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 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.[1] 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[2] (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.[3] 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.[4]

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 49 wrap fee and mutual fund wrap programs administered by 44 program sponsors use the procedures under rule 3a–4.[5] 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 minimum account requirement ($139.4 billion[6] divided by $100,000), for a total of 1,394,000 clients. In addition, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 1994 through 1997, by the minimum account requirement ($7.5 billion divided by $100,000, for an average annual number of new accounts of 75,333.[7]

The Commission staff estimates that each program sponsor spends approximately one hour 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

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1977) [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.

[2] 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.

[3] 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.

[4] The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

[5] See The Cerulli Report, Asset-Based Strategies: Developments in the Financial Advisor and Wrap Markets 66 (1997) (statistical information on wrap fee and mutual fund wrap programs).

[6] See id. at 63 (estimating amount of assets in wrap fee and mutual fund wrap programs).

[7] 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.

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 2,128,666.5 hours. This represents an increase of 1,112,666.5 hours from the prior estimate of 1,016,000 hours. The increase results primarily from an increase in the amount of assets managed under investment advisory programs and the resulting increase in the estimated number of clients in those programs. The increase also results from a more accurate calculation of certain collection of information burdens.

Form N–8B–2 is the form used by unit investment trusts (''UITs'') which are currently issuing securities, including UITs which are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Act. Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the trustee, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Act.

Based on the Commission's industry statistics, the Commission estimates that there will be approximately 34 initial filings on Form N–8B–2 and 11 post-effective amendment filings to the Form. The Commission estimates that each registrant filing an initial Form N–8B–2 would spend 1,150 hours in preparing and filing the Form and that the total hour burden for all initial Form N–8B–2 filings is 39,100 hours. Also, the Commission estimates that each UIT filing a post-effective amendment to Form N–8B–2 would spend 150 hours in preparing and filing the amendment and that the total hour burden for all post-effective amendments to the Form is 1,650 hours. By combining the total hour burdens estimated for initial Form N–8B–2 filings and post-effective amendment filings to the Form, the Commission estimates that the total annual burden hours for all registrants on Form N–8B–2 is 40,750 hours.

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 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 Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW., Washington, DC 20549.

Dated: June 22, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17560 Filed 7–1–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 6, 1998.

An open meeting will be held on Tuesday, July 7, 1998, at 10:00 a.m., in Room 6600.

A closed meeting will be held on Tuesday, July 7, 1998, following the 10:00 a.m. open meeting. A closed meeting will be held on Thursday, July 9, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exceptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The open meeting scheduled for Tuesday, July 7, 1998, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Valicenti Advisory Services, Inc. (''VAS''), a registered investment adviser, and the Division of Enforcement from an administrative law judge's initial decision.

The closed meeting scheduled for Tuesday, July 7, 1998, following the 10:00 a.m. open meeting, will be:

Post argument discussion.

The closed meeting scheduled for Thursday, July 8, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted for postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: June 30, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–17835 Filed 6–30–98; 3:53 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40123; file No. SR–AMEX–98N10]

Self-Regulatory Organizations; American Stock Exchange, Inc., Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No 1. to Proposed Rule Change Relating to Market-at-the-Close and Limit-at-the-Close Order Handling Requirements

June 24, 1998.

I. Introduction

On February 18, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Exchange's policy for entry of market-at-the-close orders (''MOC'') and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.