

ESTIMATED REDUCTION IN BURDEN HOURS AND COST OF RULE 17E-1

[effect of exemption from review and recordkeeping requirements]

	Number funds relying on rule 17e-1	Number funds subject to record- keeping and review requirements	Burden hours of recordkeeping and review requirements	Total burden hours of rec- ordkeeping and review re- quirements	Cost per hour of record- keeping and review require- ments	Total cost of burden hours
Prior Rule	293	293	12.5	3,663	\$62	\$227,106
As Amended	293	176	12.5	2,200	62	136,400

This reduction will be offset to some extent by the increase in estimated burden hours described above with respect to the required modifications of the funds' investment advisory contracts. Therefore rule 17e-1, as amended, will impose an estimated burden of 5,050 hours (\$345,400) in the first year after the amendments are adopted, and an estimated burden of 2,290 hours (\$143,000) in subsequent years.

VI. Summary of Final Regulatory Flexibility Analysis

We have prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 regarding the adoption of new rule 17a-10 and amendments to rules 10f-3, 12d3-1, 17a-6, 17d-1, and 17e-1 under the Investment Company Act. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. The following summarizes the FRFA.

A. Need for New Rule and Amendments

The FRFA summarizes the background of the amendments. The FRFA also discusses the reasons for the new rule and amendments and the objectives of, and legal basis for, these rulemaking initiatives. Those items are discussed in the release. The FRFA discusses the effect of the new rule and amendments on small entities.

B. Significant Issues Raised by Public Comment

The Commission received no comments on the IRFA.

C. Small Entities Subject to the New Rule and Amendments

The FRFA discusses the effect of the amendments on small entities. For purposes of the Regulatory Flexibility Act,⁸⁸ a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of \$50 million or less as of the end of its most recent fiscal year.⁸⁹ An

investment adviser is a small entity if it (i) manages less than \$25 million in assets, (ii) has total assets of less than \$5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages \$25 million or more in assets, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of the most recent fiscal year.⁹⁰ An issuer, other than an investment company, is a small entity if its total assets on the last day of its most recent fiscal year were \$5 million or less and it is engaged or proposing to engage in an offering of securities which does not exceed the dollar limitation prescribed by section 3(b) of the Securities Act of 1933. The staff estimates, based upon Commission filings, that there are approximately 3,650 active registered management investment companies, of which approximately 200 are small entities. The staff further estimates that there are approximately 7,560 registered investment advisers, of which approximately 430 are small entities.⁹¹

Funds and portfolio companies that are small entities will be able to rely on the amendments to rules 17a-6 and 17d-1(d)(5) if they satisfy the rules' conditions. Funds and investment advisers that are small entities will be able to rely on the amendments to rule 10f-3, 12d3-1, 17e-1, and rule 17a-10, if they meet the conditions of those rules.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Portfolio Affiliates—Rules 17a-6 and 17d-1(d)(5)

The expanded exemptions in rules 17a-6 and 17d-1(d)(5) permitting second-tier portfolio affiliates and funds to enter into principal transactions and joint arrangements would not impose any new reporting, recordkeeping, or other compliance requirements on funds

or portfolio affiliates that are small entities.

Subadviser Affiliates—Rules 17a-10, 10f-3, 12d3-1, and 17e-1

The rule and rule amendments permitting subadvisers to enter into otherwise prohibited transactions and arrangements with affiliated funds will impose compliance and recordkeeping requirements on funds and subadvisers that rely on the rules' exemptions, as the funds' advisory contracts will be required to prohibit the fund's subadvisers from consulting with one another concerning the fund's securities transactions.⁹² Based on discussions with industry representatives, our staff estimates that modifying advisory contracts in this manner will require 6 hours, at a cost of approximately \$440 per fund. While small funds and small advisers are unlikely to be disproportionately impacted by this one-time requirement, a fund complex that includes a large number of funds advised by subadvisers may experience economies of scale, as the amendments to its advisory contracts will be largely duplicative.

E. Agency Action To Minimize Effect on Small Entities

The FRFA explains that we have not identified any federal rules that duplicate or conflict with the rule and rule amendments. The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the

⁸⁸ 5 U.S.C. 601-612.

⁸⁹ 17 CFR 270.0-10.

⁹⁰ 17 CFR 275.0-7.

⁹¹ The staff was unable to determine from Commission filings the number of fund portfolio affiliates that are also small entities. We estimate that 875 companies are portfolio affiliates of funds.

⁹² See, e.g., rule 12d3-1(c)(3)(ii)(A).