

because rule 15a-5 is an exemptive rule and, therefore, funds may choose whether to rely on it. Because the information provided to the Commission on Form N-1A is available to the public, this analysis does not address the confidentiality of responses under the proposed rule.

The proposed rule would require that a fund's contract with each principal adviser that retains the services of one or more subadvisers contain a provision obligating the principal adviser to supervise and oversee the activities of its subadvisers.⁷² The proposed rule also would require all contracts with subadvisers that are retained without shareholder approval to provide that the principal adviser may terminate the subadviser at any time without penalty.⁷³

During the first year after adoption of the rule, the Commission staff estimates that requiring funds to modify their existing contracts with principal advisers so that each principal adviser is required to supervise and oversee the activities of its subadvisers would create an initial one-time burden of 5 hours per fund (4 hours by in-house counsel, .5 hours by fund directors, .5 hours by support staff)⁷⁴ or about 600 burden hours.⁷⁵ The Commission staff estimates that after the first year, approximately 10 registered open-end investment companies⁷⁶ would spend, on average, 5 hours annually (4 hours by in-house counsel, .5 hours by fund directors, .5 hours by support staff) to modify their contracts regarding supervision, for a total of 50 burden hours.

Rule 15a-5 also would require funds to provide shareholders (and file with the Commission), within 90 days of entering into a subadvisory contract or materially amending a wholly-owned

subsidiary's subadvisory contract, with an information statement describing the agreement and containing all of the information shareholders would have received in a proxy statement had a shareholder vote been held.⁷⁷ During the first 3 years after adoption of the proposed rule, the Commission staff estimates that 150 registered open-end investment companies⁷⁸ would each spend 20 hours⁷⁹ annually in preparing and distributing information statements. The total annual burden estimate for complying with the reporting requirement of rule 15a-5 would be 3,000 hours annually.

The proposed amendments also would result in new information collection requirements. The proposed amendments to Form N-1A would require any fund that is authorized to hire one or more subadvisers without shareholder approval pursuant to proposed rule 15a-5, to disclose this information in its prospectus.⁸⁰ The Commission believes that the added information collection burdens would be negligible and would be mostly offset by other disclosure amendments that would permit funds that comply with the requirements of proposed rule 15a-5 to disclose the aggregate fees paid to all unaffiliated subadvisers of the principal adviser, in lieu of the individual fee paid to each subadviser.⁸¹

To arrive at the total information collection burden, a weighted average of the first year burden and the annual

burden after the first year was calculated. Using a three-year period, the weighted average information collection burden is 3,232 hours.⁸² Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rule and amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, with reference to File No. S7-20-03. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-20-03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis

⁸² The first year burden of 3,600 hours (600 hours to modify existing contracts + 3,000 hours to comply with the reporting requirement) is weighted (1 year / 3 years = 33 percent) as 1,188 hours. The burden after the first year of 3,050 hours (50 hours to modify contracts + 3,000 hours to comply with the reporting requirement) is weighted (2 years / 3 years = 67 percent) as 2,044 hours. The total weighted information collection burden hours for the proposed amendments are 1,188 + 2,044 = 3,232 hours.

⁷² Proposed rule 15a-5(a)(4).

⁷³ Proposed rule 15a-5(b)(4). Most subadvisory contracts already contain terms that allow the principal adviser to terminate the contract at any time. We therefore estimate that there would be no costs imposed on funds by this requirement.

⁷⁴ These estimates are based on discussions with fund representatives.

⁷⁵ The Commission staff estimates that 120 funds would have to modify their advisory contracts with their principal advisers to comply with the proposed rule. These 120 funds include 101 funds that currently rely on exemptive orders, 9 funds that have filed an application for an exemptive order and, as explained *infra* note 76, 10 additional funds that would choose to rely on the proposed rule during the first year. The total number of burden hours for the first year is 120 funds × 5 hours = 600 hours.

⁷⁶ Based on the number of manager of managers applications submitted since 1995, the staff estimates that 20 additional funds per year would seek to rely on the proposed rule. Approximately 10 of those funds would be funds whose securities have already been publicly offered, and therefore would need to modify their advisory contracts with principal advisers.

⁷⁷ Proposed rule 15a-5(a)(5).

⁷⁸ Commission staff estimates that 130 funds (including 101 funds that currently rely on exemptive orders, 9 funds that have filed an application for an exemptive order, and 20 additional funds that would have filed for exemptive relief during the first year after the rule's adoption) would rely on the proposed rule during the first year after its adoption. After the first year, the staff estimates that each year 20 additional funds would rely on the proposed rule.

⁷⁹ Based on discussions with fund representatives, the Commission estimates that on average each fund would hire two new subadvisers per year. Therefore, funds would be required to send to shareholders two information statements per year. Based on discussions with fund representatives, the Commission estimates that each fund would spend 10 hours to prepare and mail each information statement.

⁸⁰ Proposed Instruction 3 to Item 4(b)(1) of Form N-1A would require a fund to disclose if it is authorized to use the services of subadvisers without shareholder approval. Proposed Item 6(a)(1)(i) of Form N-1A would require a fund in its identification and description of its investment advisers to explain for each subadviser that serves the fund without shareholder approval that such adviser may be replaced, and additional subadvisers may be retained, without shareholder approval.

⁸¹ Proposed Instruction 5 to Item 15(a)(3) of Form N-1A would allow funds to disclose the aggregate fees paid to all unaffiliated subadvisers of the principal adviser in lieu of the individual fee paid to each such subadviser.