

burden of 74,880 hours (14.4 hours per filing \times 5,200 equity portfolios).⁶⁵

In the Proposing Release, we estimated that the hour burden imposed by the proposed amendments to Form N-CSR, including the requirement for a fund to disclose its proxy voting record on Form N-CSR, would increase the hour burden per filing of a Form N-CSR by 10 hours, or 74,000 hours total.⁶⁶ This total burden hour estimate is comparable to our estimate of 74,880 total burden hours for filing Form N-PX. However, our estimate of the hour burden per filing of Form N-PX differs from the estimated hour burden per filing of Form N-CSR, in part because Form N-PX will be filed annually rather than semi-annually, and in part because we are calculating the hour burden for Form N-PX by portfolio, rather than by fund.⁶⁷

Request for Comments

We request comments on the accuracy of our estimates with respect to Form N-PX. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection

techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0609, with reference to File No. S7-36-02. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this Release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments we are adopting will require funds to provide disclosure about how they vote proxies of the portfolio securities they hold. A fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, and to include disclosure about the availability of the fund's proxy voting record. This disclosure will be included in the fund's Statement of Additional Information ("SAI") (and on Form N-CSR also, in the case of a closed-end fund's policies and procedures), which is not part of the fund's prospectus but is delivered to investors free of charge upon request. We are also requiring a fund to file with the Commission an annual report on Form N-PX, containing the fund's complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. Our amendments will also require a fund to include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. In addition, a fund will be required to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site.

In the Proposing Release, we analyzed the costs and benefits of our proposals and requested comments and data regarding the costs and benefits of the proposed form amendments. These comments are summarized below.

A. Benefits

The amendments to the registration statement and reporting forms that we are adopting will benefit fund investors, by providing them with access to information about how funds vote their proxies.

First, the amendments will provide better information to investors who wish to determine:

- To which fund managers they should allocate their capital, and
- Whether their existing fund managers are adequately maximizing the value of their shares.

The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of "utmost good faith, and full and fair disclosure."⁶⁸ This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.⁶⁹ The increased transparency resulting from proxy voting disclosure may increase investors' confidence that their fund managers are voting proxies in accordance with their fiduciary duties. Without disclosure about how the fund votes proxies, fund shareholders cannot evaluate this aspect of their managers' performance. To the extent that investors choose among funds based on their proxy voting policies and records, in addition to other factors such as expenses, performance, and investment policies, investors will be better able to select funds that suit their preferences. Further, insofar as investors may over-emphasize certain of these factors, *e.g.*, past performance, in selecting funds, it may be beneficial to provide additional

⁶⁵ The estimate of 14.4 hours per equity portfolio is based on the staff's consultations with funds that currently provide disclosure of their proxy voting records, and estimates that the average equity fund will cast votes at 144 shareholder meetings during a twelve-month reporting period, and will vote on three matters at each shareholder meeting, for a total of 432 matters voted on per year. The estimate of the number of shareholder meetings per equity fund is based on the staff's analysis of data on the average number of equities held per fund from the December 2002 edition of the *Morningstar Principia Pro* database. The estimate of the number of matters voted on at each shareholder meeting is based on information provided to the staff by a third-party provider of proxy voting services for funds and other institutional investors.

⁶⁶ Proposing Release, *supra* note 4, 67 FR at 60834.

⁶⁷ We believe it is more appropriate to estimate the burden of complying with Form N-PX by portfolio, rather than by fund, as we estimated the burden of complying with Form N-CSR in the Proposing Release. We note that many funds do not have portfolios that hold equity securities, while many funds have multiple equity portfolios. Funds with multiple equity portfolios would be required to report their proxy voting records for each portfolio holding equity securities.

⁶⁸ *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a-35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

⁶⁹ See Investment Advisers Act Release No. 2106, *supra* note 5. See also SEC, Staff Report on Corporate Accountability, *supra* note 10, at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94-2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).