

agent.<sup>61</sup> As such, each fund would have to modify the existing contract it has with the transfer agent it selects to be its designated transfer agent. This modification would create a one-time burden of 4.5 hours per fund (4 hours by in-house counsel, .5 hours by support staff) or about 17,662.5 burden hours.<sup>62</sup>

Under the proposal, a transfer agent that is designated by the fund would have to maintain records of the date and time it receives order information. There are currently approximately 208 registered fund transfer agents.<sup>63</sup> The Commission estimates that these transfer agents receive approximately 83 million fund share orders per year.<sup>64</sup> Each of the 208 transfer agents, therefore, receives approximately 399,038 orders per year. The Commission estimates that each designated transfer agent would spend approximately 100 hours per year maintaining records of the time it received order information.<sup>65</sup> Thus, the annual aggregate burden hours associated with the time of receipt recordkeeping requirement would be 20,800 hours.<sup>66</sup>

Broker-dealers and funds that choose to rely on the emergency exception would have collection of information requirements. There are currently approximately 2,203 broker-dealers that are classified as specialists in fund shares.<sup>67</sup> The Commission estimates that each broker-dealer would incur no more than one emergency per year that would qualify for the emergency exception. The Commission also estimates that each broker-dealer is involved in the sale of shares of

approximately 300 funds. Thus, approximately 2,203 broker-dealers could be subject to preparing and transmitting one certification each year to each of the 300 funds whose shares they sell, for a total of 300 certifications per year for each broker-dealer. We estimate that the average annual hour burden for all certifications per broker-dealer emergency would be one hour, or one burden hour per year for each broker-dealer.<sup>68</sup> Thus, the annual aggregate burden hours associated with the certification requirement would be 2,203 hours.<sup>69</sup>

The staff estimates that each fund would spend one hour annually, on average, maintaining the records of the certifications required by proposed rule 22c-1(b)(1)(ii). Thus, the annual aggregate burden hours associated with the emergency exception recordkeeping requirement would be 3,925 hours.<sup>70</sup> In total, the collections of information associated with the emergency exception contained in the proposed amendments to rule 22c-1 would entail 6,128 burden hours.<sup>71</sup> Using a three-year period, the average information collection burden under the proposed amendments to rule 22c-1 would be 32,815.5 hours.<sup>72</sup>

We request comment on whether these estimates are reasonable. 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 amendments should direct them to the Office of Management and Budget, Attention Desk Officer of 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. S7-27-03. 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. S7-27-03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

## VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with 5 U.S.C. 603. It relates to the amendments to rule 22c-1 under the Investment Company Act that we are proposing in this Release.

### A. Reasons for the Proposed Action

Section I of this Release describes the background and reasons for the proposed action. As discussed above, late trading appears to have been facilitated by fund managers, intermediaries, and investors in violation of our rules.<sup>73</sup> Our investigations are ongoing, but suggest that late trading of fund shares is not isolated, nor limited to any one type of fund or intermediary.<sup>74</sup>

### B. Objectives of the Proposed Action

Section II of this Release discusses the objectives of the proposed amendments. As discussed above, the Commission is proposing amendments to the rule under the Investment Company Act that requires forward pricing of redeemable securities issued by funds. The

<sup>61</sup> These numbers are based on Commission filings and are current as of the end of September 2003.

<sup>62</sup> 3,925 funds × 4.5 hours = 17,662.5 hours.

<sup>63</sup> The number of fund transfer agents is based on Form TA-2 filings with the Commission between January 1, 2003 and November 11, 2003.

<sup>64</sup> The Commission staff estimates that transfer agents receive approximately half of the total number of fund share orders made each year. Fund/SERV processes the other half of the total number of fund share orders made each year. In 2002, Fund/SERV processed 83 million fund transactions. See *supra* note. Based on that information, the Commission estimates that there were 166,000,000 total fund share orders processed in 2002. Transfer agents received approximately half of those 166,000,000 orders. Therefore, transfer agents directly received approximately 83,000,000 fund share orders. We request comment on our estimate of the number of fund orders submitted directly to designated transfer agents.

<sup>65</sup> For purposes of this supporting statement, the Commission assumes that transfer agents receive most fund share orders electronically, and that designated transfer agents would maintain the records of the time of receipt electronically.

<sup>66</sup> 208 transfer agents × 100 hours = 20,800 hours.

<sup>67</sup> The number of broker-dealers is based on year-end 2002 Commission filings.

<sup>68</sup> Because the certification to each of the 300 funds would be based on the same emergency, the information required to be included in the certification would be the same for each of the 300 certifications. Therefore, little time would be required after the preparation of the first certification to prepare the remaining certifications.

<sup>69</sup> 2,203 broker-dealers × 1 hour = 2,203 hours.

<sup>70</sup> 3,925 funds × 1 hour = 3,925 hours.

<sup>71</sup> 2,203 hours for the certification of the emergencies + 3,925 hours maintaining records = 6,128 hours.

<sup>72</sup> The average of the first year burden of 44,590.5 hours (17,662.5 hours for the contract modification collection of information + 20,800 hours for the time of receipt recordkeeping collection of information + 6,128 hours for the emergency exception collections of information) and the burden of 26,928 hours for each of the next two years (20,800 hours for the time of receipt recordkeeping collection of information + 6,128 hours for the emergency exception collections of information) is 32,815.5 hours.

<sup>73</sup> See *supra* note 17 and accompanying text.

<sup>74</sup> See *supra* notes 16-17 and accompanying text.