

requirements in the event they rely on the exception. Neither the certification that the broker-dealer would be required to send, nor the notification that the designated transfer agent or registered clearing agent would be required to provide as a result of an emergency that delayed the transmission or receipt of orders, is intended to be a lengthy document, and small entities should not bear a disproportionate expense in complying with this condition. Furthermore, because the proposed emergency exception would be optional, a small entity might not use the exception, particularly if it concluded that any costs borne are unlikely to be offset by the resulting benefits. Similarly, the recordkeeping requirements for funds that receive emergency certifications are minimal; funds that are small entities would not be unduly burdened by these record maintenance duties.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed rule or amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

The Commission does not presently believe that the establishment of special compliance requirements or timetables under the proposals for small entities is feasible or necessary.⁸⁵ Because the proposed amendments arise from a concern that fund shareholders are disadvantaged by abuses of a deadline, exceptions for small entities could compromise the effectiveness of the amended rule. Except for funds that are small entities, the other small entities affected by the proposed amendments (e.g., broker-dealers and designated transfer agents) would have no formal

compliance requirements as a result of these proposed amendments.

A recordkeeping requirement would arise for small transfer agents that choose to be a fund's designated transfer agent. The time of receipt recordkeeping requirement is necessary to enable the Commission and its staff to verify that late trading has not taken place. Reporting or compliance obligations would arise for a small broker-dealer that invoked the proposed emergency exception allowing for an order to receive same-day pricing for orders transmitted to the fund, its designated transfer agent, or registered clearing agency after 4 p.m. These minimal compliance and reporting requirements would be necessary to enable the Commission and its staff to verify that late trading has not taken place. Accordingly, the Commission cannot further clarify, consolidate, or simplify the requirements associated with this exception.

The Commission is asking for comment on an approach that would allow certain intermediaries to continue to obtain same-day pricing for orders they receive before the pricing time even if they submit those orders to the fund (or its designated transfer agent or a registered clearing agency) after the pricing time. This approach would be available to intermediaries who have technology-based systems, as well as controls, that demonstrably limit the ability of the intermediary to trade after the pricing time.⁸⁶ We request comment on any concerns raised by this approach. Assessing the reliability of such technology, for example, may be difficult for funds and the Commission. Would the Commission or its staff need to establish and then verify the standards of such systems?

Moreover, under this approach, small intermediaries desiring same-day pricing might have to choose between potentially costly technological and telecommunication upgrades in order to compete with larger firms. Would this approach place small intermediaries at a disadvantage with respect to their larger competitors?⁸⁷

⁸⁶ See *supra* notes 23–24 and accompanying and following text.

⁸⁷ We have found through investigations and examinations of transfer agents that clients of broker-dealers that have a small volume of business in fund share transactions rely on paper-based applications in 10–40% of mutual fund share transactions. There is no discernible time sensitivity in this mode of fund investment, in which account applications and bank checks are sent to funds or their transfer agents through regular or express mail.

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments, and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the proposed rule and amendments, and reflected in the Final Regulatory Flexibility Analysis.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–27–03, and this file number should be included on the subject line if E-mail is used.⁸⁸ Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (<http://www.sec.gov>).

VII. Statutory Authority

The Commission is proposing amendments to rule 22c–1 pursuant to the authority set forth in sections 22(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–22(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Section 270.22c–1 is revised to read as follows:

⁸⁸ Comments on the IRFA will be placed in the same public file that contains comments on the proposed rule and amendments themselves.

⁸⁵ The proposal would permit exceptions in very limited circumstances, such as well-documented emergencies that prohibit timely transmission. See proposed rule 22c–1(b)(1)(i).