

**SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 17a-6**

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 17(a) of the Investment Company Act of 1940 (the “Act”) generally prohibits affiliated persons of a registered investment company (“fund”) from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.¹ Rule 17a-6 permits a fund, or a company controlled by the fund, and a “portfolio affiliate” (a company that is an affiliated person of the fund because the fund controls the company, or holds five percent or more of the company’s outstanding voting securities) of the fund to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions.² A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (e.g., directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a-6 specifies certain interests that are not “financial interests,” including any interest that the fund’s board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 (“PRA”).³

¹ 15 U.S.C. 80a-17(a).

² 17 CFR 270.17a-6.

³ 44 U.S.C. 3501.

2. Purpose and Use of the Information Collection

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is “material,” the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a-6 are intended to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director’s finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

3. Consideration Given to Information Technology

To the extent the rule includes recordkeeping requirements, the Electronic Signatures in Global and National Commerce Act⁴ and the conforming amendments to recordkeeping rules under the Investment Company Act permit funds to maintain records electronically.

4. Duplication

Rule 31a-1 under the Investment Company Act requires fund boards to maintain board meeting minutes.⁵ Rule 17a-6 requires a fund’s board to record the basis for its finding in its meeting minutes. Funds, however, would not be required to retain duplicate records of the meeting minutes.

⁴ P.L. 106-229, 114 Stat. 464 (June 30, 2000).

⁵ 17 CFR 270.31a-1.

5. Effect on Small Entities

Rule 17a-6 is available for any transaction involving small entities, if the funds participating in the transaction comply with the conditions set forth in the rule. These requirements protect the interests of the funds and their shareholders from overreaching by fund affiliates. The rule does not disproportionately burden small entities. The Commission believes that it could not adjust the rule to lessen the burden on small entities of complying with the rule without jeopardizing the interests of investors in small entities.

6. Consequences of Not Conducting Collection

The information collection requirements in rule 17a-6 only arise when a prohibited participant may have a direct or indirect financial interest in a party to a principal transaction involving a fund, or a company controlled by a fund, and a portfolio affiliate of the fund. Less frequent information collection would impede the Commission's inspection staff's ability to monitor the board's oversight of otherwise prohibited principal transactions and would not be consistent with protecting fund shareholders from overreaching by fund affiliates.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

As noted above, the records required under rule 17a-6 also must be kept pursuant to rule 31a-1 of the Act. Rule 31a-2 addresses the record retention requirements for rule 31a-1 records, and the PRA justification for that rule explains the need for record retention in excess of three years.

8. Consultations Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 17a-6 before it submitted this request for approval to the Office of Management and Budget. The Commission received no comments in response to this request.

More generally, the Commission and the staff at the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

Rule 17a-6 requires that certain information, potentially including name, occupation, and job title, be provided to an investment company's board of directors. No information of a sensitive nature, including social security numbers, will be required under this collection of information. The agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with section 208 of the E-Government Act of 2002, the agency has determined that the information collection does not trigger the Privacy Impact Assessment (PIA) requirement.

12. Burden of Information Collection

The following estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Based on public filings made with the Commission, we estimate that annually 335 funds and their series (collectively, “funds”) may rely on rule 17a-6 to engage in otherwise prohibited transactions under section 17(a) of the 1940 Act.⁶ This estimate is based on publicly available Form N-CEN filings.⁷ Solely for the purposes of this PRA extension, we assume that each of these funds has engaged in one transaction per reporting period that resulted in a paperwork burden pursuant to rule 17a-6. We estimate that compliance with the recordkeeping requirement for rule 17a-6 will impose a burden of .2 hours (12 minutes) for each transaction for which there is a paperwork burden.⁸ Therefore, we estimate 67 burden hours to be associated with rule 17a-6 recordkeeping requirements annually, with an associated internal cost of \$5,762.⁹ The table below summarizes the ongoing annual burden estimates associated with rule 17a-6.

⁶ We analyzed Form N-CEN filings for registrants as of December 2019, 2020 and 2021 (based upon available Edgar filings through July 2022). Based on these filings, we calculated the number of funds reporting reliance on rule 17a-6 for the most recent respective reporting period as of December 2019, 2020, and 2021 to be 343, 320, and 342, respectively. For the purposes of this PRA extension, the staff estimated an average of 335 funds to rely on rule 17a-6 each reporting period.

⁷ See Item C.7.d of Form N-CEN.

⁸ The burden hours estimate is based upon the estimates contained in rule 17a-6’s adopting release. *See Transactions of Investment Companies with Portfolio and Subadviser Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3153 (Jan. 22, 2003)].*

⁹ These estimates are based on the following calculations: (0.2 hours × 335 responses = 67 burden hours); (\$86 per hour × 67 hours = \$5,762 total cost). Our estimates concerning wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association and modified by Commission staff for 2022. The estimated blended wage figure is based on published rates for general clerk and senior computer operator, modified to account for a 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, yielding an effective hourly rate of \$86. The rates used to create the blended rate are as follow: general clerk - \$68; senior computer operator - \$104. *See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.*

Table 1: Change in Burden Estimates for Rule 17a-6

	Annual Number of Responses			Annual Time Burden (hours)			Cost Burden (dollars)		
	<i>Previously approved</i>	<i>Proposed estimate</i>	<i>Change</i>	<i>Previously approved</i>	<i>Proposed estimate</i>	<i>Change</i>	<i>Previously approved</i>	<i>Proposed estimate</i>	<i>Change</i>
Rule 17a-6	1	335	334	1	67	66	0	0	0

13. Cost to Respondents

There is no annual cost burden associated with complying with the information collection requirements in rule 17a-6, aside from the cost of the burden hours identified in Item 12 of this Supporting Statement.

14. Cost to the Federal Government

Rule 17a-6 does not require that anything be filed with the Commission. Commission staff may, in the course of fund inspections, monitor compliance with the proposed amendments and additions.

15. Changes in Burden

Rule 17a-6 has a current annual burden of 1 hour. The hour burden associated with rule 17a-6 has increased by 66 hours since our last burden analysis. We also increased the amount of respondents from 1 to 335. These increases are due to an adjustment in the estimate of the number of funds relying on rule 17a-6 based upon our review of Form N-CEN filings.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Requirement for Paperwork Reduction Act Submission

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.