

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 22c-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Rule 22c-1 (17 CFR 270.22c-1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the “Investment Company Act” or “Act”) enables a fund¹ to choose to use “swing pricing” as a tool to mitigate shareholder dilution. Rule 22c-1 is intended to promote investor protection by providing funds with an additional tool to mitigate the potentially dilutive effects of shareholder purchase or redemption activity and a set of operational standards that allow funds to gain comfort using swing pricing as a means of mitigating potential dilution.

In order to use swing pricing under rule 22c-1, a fund is required to establish and implement swing pricing policies and procedures that meet certain requirements. The policies and procedures must specify the process for determining the level(s) of net purchases into or net redemptions from the fund (“swing thresholds(s)”) that would trigger share price adjustment for transacting shareholders, as well as for determining the figure(s) used for such share price adjustment (“swing factor(s)”), including the establishment of an upper limit on the swing factor(s) used (which may not exceed two percent of net asset value (“NAV”) per share). The rule requires a fund’s board of directors to approve the fund’s swing pricing policies and procedures, as well as the fund’s swing threshold and swing factor upper limit (and any changes to the swing threshold or swing factor upper limit). The fund’s board is also required to review,

¹ For purposes of this Supporting Statement, the term “fund” denotes a fund as defined in rule 22c-1(a)(3), that is, “a registered open-end management investment company (but not a registered open-end management investment company that is regulated as a money market fund under § 270.2a-7 or an exchange traded fund as defined in rule 22c-1(a)(3)(v)(A)).”

no less frequently than annually, a written report prepared by the persons responsible for administering swing pricing that describes: (i) its review of the adequacy of the fund’s swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution; (ii) any material changes to the fund’s swing pricing policies and procedures since the date of the last report; and (iii) its review and assessment of the fund’s swing threshold(s), swing factor(s), and swing factor upper limit considering the requirements of the rule, including the information and data supporting these determinations. A fund is required to maintain the fund’s swing pricing policies and procedures and a written copy of the periodic report provided to the board.

The respondents to amended rule 22c-1 are open-end management investment companies (other than money market funds or exchange-traded funds) that engage in swing pricing. Compliance with rule 22c-1(a)(3) is mandatory for any fund that chooses to use swing pricing to adjust its NAV in reliance on the rule. Finally, rule 22c-1(a)(3) requires a fund to maintain a written copy of swing pricing policies and procedures adopted by the fund that are in effect, or at any time within the past six years were in effect, in an easily accessible place. The requirements that funds adopt policies and procedures, obtain board approval and periodic review, provide a written report to the board, and retain certain records related to swing pricing are “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).²

2. Purpose and Use of the Information Collection

The information collection requirements of rule 22c-1(a)(3) are integral to the swing pricing framework created by the rule. Thus, the information collections are necessary to help

² 44 U.S.C. 3501-3520.

further the rule's goal of promoting investor protection by providing funds with a tool to mitigate potential dilution and to manage fund liquidity. The information collections also assist the Commission's examination staff to ascertain whether a fund that has adopted swing pricing policies and procedures has done so in compliance with the requirements of rule 22c-1(a)(3).

3. Consideration Given to Information Technology

Rule 22c-1(a)(3) does not require the reporting of any information or the filing of any documents with the Commission. The Electronic Signatures in Global and National Commerce Act³ and the conforming amendments to rules under the Investment Company Act and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) permit funds and their financial intermediaries to maintain records electronically.

4. Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule. The information required by rule 22c-1(a)(3) is not duplicated elsewhere.

5. Effect on Small Entities

The information collection requirements of rule 22c-1(a)(3) do not distinguish between small entities and other funds. As discussed above, the information collection requirements of rule 22c-1(a)(3) are integral to the swing pricing framework created by the rule, and thus they are necessary to help further the investor protection goals of the rule. The Commission therefore believes that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of rule 22c-1(a)(3). Because the adoption of swing pricing policies and procedures is permitted, but not required, under the rule a fund that is

³ P.L. 106-229, 114 Stat. 464 (June 30, 2000).

a small entity is not required to incur the costs of compliance.

6. Consequences of Not Conducting Collection

Rule 22c-1(a)(3) requires a fund that chooses to use swing pricing to adopt swing pricing policies and procedures that include certain elements and are approved by the fund's board of directors, and to maintain certain records, including written copies of the fund's swing pricing policies and procedures, the periodic report provided to the board,⁴ and records of support for each computation of an adjustment to the fund's NAV based on the fund's swing pricing policies and procedures. The adoption and maintenance of written policies and procedures are integral to the swing pricing framework created by the rule. Furthermore, the board reporting elements of the rule are important investor protection controls. Thus, not requiring these collections of information would be incompatible with the investor protection goals of rule 22c-1(a)(3).

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

Rule 22c-1(a)(3) would require funds to retain certain written records for more than three years. Specifically, the rule would require a fund to maintain a written copy of swing pricing policies and procedures adopted by the fund that are in effect, or at any time within the past six years were in effect, in an easily accessible place. The long-term retention of these records contributes to the effectiveness of the Commission's examination and inspection program. Commission staff periodically inspects the operations of funds to ensure compliance with rules and regulations under the Act; however, each fund may be inspected only at intervals of several years due to limits on our resources. For this reason, we often need information relating to events or transactions that occurred years ago.

⁴ Rule 22c-1(a)(3)(iii).

We note that rule 31a-2(a)(2) requires a fund to keep records evidencing and supporting each computation of the fund's NAV and reflects the NAV adjustments based on a fund's swing pricing policies and procedures. The six-year retention period in rule 22c-1(a)(3) is consistent with the retention period in current rule 31a-2. Consistency in these retention periods is appropriate in order to permit a fund or Commission staff to review historical instances of NAV adjustments effected pursuant to the fund's swing pricing policies and procedures, in light of the policies and procedures that were actually in place at the time the NAV adjustments occurred.

8. Consultation Outside the Agency

The Commission and the staff of 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. The Commission requested public comment on the collection of information requirements of rule 22c-1(a)(3) before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request.

9. Payment or Gift

Not applicable.

10. Confidentiality

Responses provided to the Commission in connection with staff examinations or investigations would be kept confidential subject to the provisions of applicable law. If information collected pursuant to rule 22c-1(a)(3) is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to

the Commission in the context of its examination and oversight program.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with rule 22c-1(a)(3) is only mandatory for funds that choose to adopt swing pricing.

A. Documentation and Approval of Swing Pricing Policies and Procedures

As discussed above, funds are permitted but not required to use swing pricing, provided that, in order to use swing pricing, a fund must adopt swing pricing policies and procedures in accordance with the requirements of rule 22c-1(a)(3). While we are not aware of any funds that have engaged in swing pricing,⁵ we are estimating for the purpose of this analysis that 5 fund complexes have funds that may adopt swing pricing policies and procedures in the future pursuant to the rule, and that each fund complex would incur a one-time average burden of 48 hours to document swing pricing policies and procedures, with 24 hours spent by a senior accountant and 24 hours spent by an assistant general counsel or chief compliance officer. We

⁵ No funds have engaged in swing pricing as reported on Form N-CEN as of August 15, 2022.

further estimate that each fund complex would spend 2 hours, on average, preparing the required written report to the board, typically using a compliance attorney. Since a fund board approves the fund's swing pricing policies and procedures and review, no less frequently than annually, a written report that includes certain required elements, we estimate a one-time burden of 6 hours per fund complex associated with the fund board's review and approval of swing pricing policies and procedures.

Amortized over a 3-year period, we estimate that this will be an annual burden per fund complex of about 18.67 hours.⁶ Accordingly, we estimate that the total burden associated with the preparation and approval of swing pricing policies and procedures by those fund complexes that would use swing pricing will be 280 hours.⁷ We also estimate that it will cost a fund complex \$48,188 to document, review and initially approve these policies and procedures, for a total cost of \$240,940.⁸

B. Recordkeeping Requirements Associated with Rule 22c-1(a)(3)

Rule 22c-1 requires a fund that uses swing pricing to maintain the fund's swing policies and procedures that are in effect, or at any time within the past six years were in effect, in an easily accessible place.⁹ The rule also requires a fund to retain a written copy of the periodic

⁶ This estimate is based on the following calculations: $(48 \text{ hours} + 2 \text{ hours} + 6 \text{ hours}) \div 3 = 18.67 \text{ hours}$.

⁷ This estimate is based on the following calculation: $(48 + 2 + 6) \text{ hours} \times 5 \text{ fund complexes} = 280 \text{ hours}$.

⁸ These estimates are based on the following calculations: 24 hours x \$237 (hourly rate for a senior accountant) = \$5,688; 24 hours x \$545 (blended hourly rate for assistant general counsel (\$510) and chief compliance officer (\$580)) = \$13,080; 2 hours (for a fund attorney's time to prepare materials for the board's determinations) x \$400 (hourly rate for a compliance attorney) = \$800; 6 hours x \$4,770 (hourly rate for a board of 9 directors) = \$28,620; $(\$5,688 + \$13,080 + \$800 + \$28,620) = \$48,188$; $\$48,188 \times 5 \text{ fund complexes} = \$240,940$. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The staff has estimated the average cost of board of director time as \$4,770 per hour for the board as a whole, based on information received from funds and their counsel..

⁹ See rule 22c-1(a)(3)(iii).

report provided to the board prepared by the swing pricing administrator that describes, among other things, the swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution and any back-testing performed.¹⁰ The retention of these records is necessary to allow the staff during examinations of funds to determine whether a fund is in compliance with its swing pricing policies and procedures and with rule 22c-1. While we are not aware of any funds that have engaged in swing pricing,¹¹ we are estimating for the purpose of this analysis that 5 fund complexes have funds that may adopt swing pricing policies and procedures in the future pursuant to the rule.

We estimate that the burden is 4 hours per fund complex to retain the proposed swing pricing records, with 2 hours spent by a general clerk and 2 hours spent by a senior computer operator. We estimate a time cost per fund complex of \$344.¹² We estimate that the total for recordkeeping related to swing pricing will be 20 hours, at an aggregate cost of \$1,720, for all fund complexes that we believe include funds that have adopted swing pricing policies and procedures.¹³ We estimate that there are no external costs associated with this collection of information.

C. Estimated Total Burden

Amortized over a three-year period, we believe that the hour burdens and time costs associated with rule 22c-1, including the burden associated with the requirements that funds

¹⁰ See *id.*

¹¹ No funds have engaged in swing pricing as reported on Form N-CEN as of August 15, 2022.

¹² This estimate is based on the following calculations: 2 hours x \$68 (hourly rate for a general clerk) = \$136; 2 hours x \$104 (hourly rate for a senior computer operator) = \$208. \$136 + \$208 = \$344.

¹³ These estimates are based on the following calculations: 4 hours x 5 fund complexes = 20 hours. 5 fund complexes x \$344 = \$1,720.

adopt policies and procedures, obtain board approval, and periodic review of an annual written report from the swing pricing administrator, and retain certain records and written reports related to swing pricing, will result in an average aggregate annual burden of 113.3 hours, and average aggregate time costs of \$82,033.¹⁴ Information related to the estimated total burden is also summarized in the table below.

Summary of Revised Annual Responses, Burden Hours, and Cost Estimates

IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			External Cost to Respondents (\$)		
	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
Rule 22c-1	5	5	0	113.3	113.3	0	0	\$2,655	\$2,655

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to comply with rule 22c-1(a)(3), such as licensing software solutions or for the services of external service providers. The cost burden does not include the hour burden discussed in Item 12. We estimate that rule 22c-1(a)(3) imposes a total external cost burden of \$2,655 for outside legal services related to compliance with the policies and procedures requirement.¹⁵ Although rule 22c-1(a)(3) requires funds to maintain records for six years, these records may be maintained electronically and, even if maintained in hard copy, are unlikely to be voluminous. The staff has not estimated a capital cost in connection with the recordkeeping requirements because funds and their advisers would likely use existing recordkeeping systems to maintain the required records.

¹⁴ These estimates are based on the following calculations: $(280 \text{ hours (year 1)} + (3 \times 20 \text{ hours}) \text{ (years 1, 2 and 3)}) \div 3 = 113.3 \text{ hours}$; $(\$240,940 \text{ (year 1)} + (3 \times \$1,720) \text{ (years 1, 2 and 3)}) \div 3 = \$82,033$.

¹⁵ This estimated burden is based on the estimated wage rate of \$531 per hour for outside legal services and the following calculation: $\$531 \times 5 \text{ fund complexes} = \$2,655$.

14. Cost to the Federal Government

The rule does not impose any additional costs on the federal government.

15. Change in Burden

The estimated total annual burden hours has remained the same at 113.3 hours. Based on a review of filings, the staff's estimates of the number of fund complexes that have funds that may adopt swing pricing policies and procedures in the future has remained the same. The estimated external cost burden associated with this collection of information has increased from \$0 to \$2,655 to reflect estimated costs of outside legal services.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act

Submissions

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.