

The Commission adopted rule 17f-4 in 1978 to reflect the custody practice and commercial law of that time. In particular, the rule was designed to be compatible with the 1978 revisions to Article 8 of the Uniform Commercial Code ("UCC") ("Prior Article 8").³ Custody practices have changed substantially since 1978, and the drafters of the UCC approved major amendments to Article 8 in 1994 to reflect these changes ("Revised Article 8").⁴ While Prior Article 8 reflected expectations that depository practice would involve registering investors' interests in securities on the issuer's own books, Revised Article 8 recognizes that under current practice, an investor usually maintains its securities through an account with a broker-dealer, bank or other financial institution ("securities intermediary").⁵ Revised Article 8 has significantly clarified the legal rights and duties that apply in indirect holding arrangements, and every State has enacted Revised Article 8 into law.

On February 13, 2003, the Commission adopted amendments to reflect the recent changes in custody practices and commercial law.⁶ The amendments updated and simplified the rule, and substantially eased rule 17f-4's reporting, recordkeeping, and other compliance requirements. Most prominently, the amended rule eliminated the confirmation, segregation, and earmarking requirements.⁷ In place of these detailed

investment trust or a face-amount certificate company, to use a security depository. *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) [68 FR 8438 (Feb. 20, 2003)]. The term "fund" is used in this Notice to mean all registered investment companies.

³ Article 8 of the UCC governs the ownership and transfer of investment securities. *See* Uniform Commercial Code, 1978 Official Text with Comments, Article 8, Investment Securities (West 1978) ("Prior Article 8"); Use of Depository Systems by Registered Management Companies, Investment Company Act Release No. 10053 (Dec. 8, 1977) [42 FR 63722 (Dec. 19, 1977)] at nn.4-7, 9, 12 and accompanying text (citing provisions of Prior Article 8).

⁴ *See* Uniform Commercial Code, Revised Article 8—Investment Securities (With conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments) ("Revised Article 8"), Prefatory Note at I.B., C., and D.

⁵ Revised Article 8, *supra* note 3, section 8-102(a)(14) and Prefatory Note at III.A. (defining a "securities intermediary").

⁶ *See supra* note 2.

⁷ Previously, the custodian was required to send the fund a written confirmation of each transfer of securities to or from the fund's account with the custodian (the "confirmation requirement"). The custodian also had to maintain the fund's securities in a depository account for the custodian's customers that is separate from the depository account for the custodian's own securities (the "segregation requirement") and had to identify on

requirements, amended rule 17f-4 required funds to modify their contracts with their custodians or securities depositories to add two provisions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a "securities intermediary" to obtain and thereafter maintain financial assets.⁸ Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.⁹

The Commission staff estimates that 4,866 respondents (including 4,711 active registered investment companies, 130 custodians, and 25 possible securities depositories) are subject to the requirements in rule 17f-4. The rule is elective, but most if not all funds use depository custody arrangements.¹⁰

The Commission staff estimates that, on an annual basis, about 471 funds¹¹ spend an average of 2 hours annually complying with the contract requirements of rule 17f-4 (e.g., signing contracts with additional custodians or securities depositories) for a total of 942 burden hours.

Rule 17f-4 requires that a custodian, upon request, provide a fund with any available reports on its internal accounting controls and financial strength. The Commission staff estimates that 130 custodians spend 12 hours annually in transmitting such reports to funds. In addition, approximately 47 funds (i.e., one percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. The Commission staff estimates that, for each of the 47 funds, depositories spend 12 hours annually transmitting reports to the funds. The total annual burden estimate for compliance with rule 17f-4's reporting requirement is therefore 2,124 hours.

If a fund deals directly with a securities depository, rule 17f-4

the custodian's records a portion of the total customer securities as attributed to the fund (the "earmarking requirement"). Revised Article 8 made these custodial compliance requirements unnecessary to protect fund assets.

⁸ Rule 17f-4(a)(1). This provision simply incorporates into the rule the standard of care provided for by section 504(c) of Revised Article 8 when the parties have not agreed to a standard.

⁹ If a fund deals directly with a depository, similar requirements apply to the depository.

¹⁰ The Commission staff estimates that more than 97 percent of all funds now use depository custody arrangements.

¹¹ The Commission staff estimates that about 10 percent of all funds approve new depository custody arrangements yearly or a fund changes custodians (or securities depositories) every 10 years.

requires that the fund implement internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officer's instructions). The Commission staff estimates that 47 funds spend 10 hours annually implementing systems to prevent unauthorized officer's instructions, resulting in 470 burden hours for this requirement under rule 17f-4.

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's paperwork requirement is 3,536 hours.

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

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 2, 2004.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

- Rule 17a-8; SEC File No. 270-225; OMB Control No. 3235-0235

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-8 [17 CFR 270.17a-8] under the Investment Company Act of 1940 (the "Act") is entitled "Mergers of affiliated companies." Rule 17a-8 exempts certain mergers and similar business combinations ("mergers") of affiliated registered investment companies ("funds") from section 17(a) prohibitions on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a-8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 600 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 4,200 hours.

This estimate represents an increase of 3,600 hours from the prior estimate of 600 hours. The increase results from an increase in the estimated average annual hour burden of meeting the requirements of 17a-8.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be \$15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be \$50,000. The Commission staff estimates that each year approximately 10 mergers with

unregistered entities occur and approximately 15 funds hold shareholder votes that would not otherwise have held a shareholder vote to comply with state law. The total annual cost burden of meeting these requirements is estimated to be \$900,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 2, 2004.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 53; SEC File No. 270-376, OMB Control No. 3235-0426,
Rule 57(b) and Form U-33-S, SEC File No. 270-376, OMB Control No. 3235-0429

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Sections 32 and 33 of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 53, 54, and 57(b) under the Act, permit, among other things, utility holding companies registered under the Act to make direct or indirect investments in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"), as defined in sections 32 and 33 of the Act, respectively, without the prior approval of the Commission, if certain conditions are met. Rules 53 and 54 do not create a reporting burden for respondents. Rule 53 does, however, contain recordkeeping and retention requirements. As required by Congress, the Commission mandates the maintenance of certain books and records identifying investments in and earnings from all subsidiary EWGs or FUCOs in order to measure their financial effect on the registered systems.

The Commission estimates that the total annual recordkeeping and record retention burden under rules 53 will be a total of 290 hours (10 hours per respondent \times 29 respondents = 290 burden hours). It is estimated that there will be no burden hours associated with rule 54.

Under rule 57(b) there is an annual requirement for any public utility company that owns one or more FUCOs to file Form U-33-S. The information contained in Form U-33-S allows the Commission to monitor overseas investments by public utility companies.

The Commission estimates that the total annual reporting burden under rule 57(b) will be 18 hours (3 hours per respondent \times 6 filings = 18 hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Rules 53, 54, and 57(b) each impose a mandatory recordkeeping requirement of this information collection. It is mandatory that qualifying companies provide the information required by rules 53, 54 and 57(b). There is no requirement to keep the information confidential because it is public information.