

While most funds do not commonly engage in transactions covered by rule 17a-7, the Commission staff estimates that nearly all funds have adopted procedures for complying with the rule.<sup>2</sup> Of the approximately 3891 currently active funds, the staff estimates that virtually all have already adopted procedures for compliance with rule 17a-7. This is a one-time burden, and the staff therefore does not estimate an ongoing burden related to the policies and procedures requirement of the rule for funds.<sup>3</sup> The staff estimates that there are approximately 150 new funds that register each year, and that each of these funds adopts the relevant policies and procedures. The staff estimates that it takes approximately 4 hours to develop and adopt these policies and procedures, as follows: 3 hours spent by a compliance attorney, and 1 hour collectively spent by the board of directors. Therefore, the total annual burden related to developing and adopting these policies and procedures would be approximately 600 hours.<sup>4</sup>

Of the 3891 existing funds, the staff assumes that approximately 25%, (or 973) enter into transactions affected by rule 17a-7 each year (either by the fund directly or through one of the fund's series), and that the same percentage (25%, or 38 funds) of the estimated 150 funds that newly register each year will also enter into these transactions, for a total of 1011<sup>5</sup> companies that are affected by the recordkeeping requirements of rule 17a-7. These funds must keep records of each of these transactions, and the board of directors must quarterly determine that all relevant transactions were made in compliance with the company's policies and procedures. The rule generally imposes a minimal burden of collecting and storing records already generated for other purposes.<sup>6</sup> The staff estimates that the burden related to making these

records and for the board to review all transactions would be 3 hours annually for each respondent, (2 hours spent by compliance attorneys and 1 hour spent by the board of directors)<sup>7</sup> or 3033 total hours each year.<sup>8</sup>

Based on these estimates, the staff estimates the combined total annual burden hours associated with rule 17a-7 is 3633 hours.<sup>9</sup> The staff also estimates that there are approximately 1161 respondents and 8238 total responses.<sup>10</sup>

The estimates of 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 Commission rules. The collection of information required by rule 17a-7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: December 22, 2008.

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon written request, copies available from:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 0-1; SEC File No. 270-472; OMB Control No. 3235-0531.

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") has submitted to the Office of Management and Budget request for extension of the previous approved collection of information discussed below.

The Investment Company Act of 1940 (the "Act")<sup>1</sup> establishes a comprehensive framework for regulating the organization and operation of investment companies ("funds"). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.<sup>2</sup>

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0-1 (17 CFR 270.0-1).<sup>3</sup> Rule 0-1, as subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0-1 defines terms that serve as conditions to the availability of certain of the Commission's exemptive rules. More specifically, the term "independent legal counsel," as defined in rule 0-1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules ("exemptive rules") under the Act.<sup>4</sup>

<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> For example, fund directors must approve investment advisory and distribution contracts. *See* 15 U.S.C. 80a-15(a), (b), and (c).

<sup>3</sup> Investment Company Act Release No. 4 (Oct. 29, 1940) (5 FR 4316 (Oct. 31, 1940)). Note that rule 0-1 was originally adopted as rule N-1.

<sup>4</sup> The relevant exemptive rules are: rule 10f-3 (17 CFR 270.10f-3), rule 12b-1 (17 CFR 270.12b-1),

Continued

<sup>2</sup> Unless stated otherwise, these estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives.

<sup>3</sup> Based on our reviews and conversations with fund representatives, we understand that funds rarely, if ever, need to make changes to these policies and procedures once adopted, and therefore we do not estimate a paperwork burden for such updates.

<sup>4</sup> This estimate is based on the following calculations: (4 hours × 150 = 600 hours).

<sup>5</sup> This estimate is based on the following calculation: (973 + 38 = 1011).

<sup>6</sup> Commission staff believes that rule 17a-7 does not impose any costs associated with record preservation in addition to the costs that funds already incur to comply with the record preservation requirements of rule 31a-2 under the Act. Rule 31a-2 requires companies to preserve certain records for specified periods of time.

<sup>7</sup> The staff estimates that funds that rely on rule 17a-7 annually enter into an average of 8 rule 17a-7 transactions each year. The staff estimates that the compliance attorneys of the companies spend approximately 15 minutes per transaction on this recordkeeping, and the board of directors spends a total of 1 hour annually in determining that all transactions made that year were done in compliance with the company's policies and procedures.

<sup>8</sup> This estimate is based on the following calculation: (3 hours × 1011 companies = 3033 hours).

<sup>9</sup> This estimate is based on the following calculations: (600 hours + 3033 hours = 3633 total hours).

<sup>10</sup> This estimate is based on the following calculations: (150 newly registered funds + 1011 funds that engage in rule 17a-7 transactions = 1161); (1011 funds that engage in rule 17a-7 transactions × 8 times per year = 8088); (8088 + 150 = 8238 responses).

The Commission amended rule 0–1 to include the definition of the term “independent legal counsel” in 2001.<sup>5</sup> This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an “independent legal counsel.” This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board’s counsel has represented the fund’s investment adviser, principal underwriter, administrator (collectively, “management organizations”) or their “control persons”<sup>6</sup> during the past two years, rule 0–1 requires that the board’s independent directors make a determination about the adequacy of the counsel’s independence. A majority of the board’s independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel’s prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel’s professional judgment and legal representation. Rule 0–1 also requires that a record for the basis of this determination is made in the minutes of the directors’ meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

rule 15a–4(b)(2) (17 CFR 270.15a–4(b)(2)), rule 17a–7 (17 CFR 270.17a–7), rule 17a–8 (17 CFR 270.17a–8), rule 17d–1(d)(7) (17 CFR 270.17d–1(d)(7)), rule 17e–1(c) (17 CFR 270.17e–1(c)), rule 17g–1 (17 CFR 270.17g–1), rule 18f–3 (17 CFR 270.18f–3), and rule 23c–3 (17 CFR 270.23c–3).

<sup>5</sup> See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3735 (Jan. 16, 2001)).

<sup>6</sup> A “control person” is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund’s management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of “independent legal counsel” under rule 0–1. We assume that approximately 4128 funds rely on at least one of the exemptive rules annually.<sup>7</sup> We further assume that the independent directors of approximately one-third (1376) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.<sup>8</sup> We estimate that each of these 1376 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 1032 hours. Based on this estimate, the total annual cost for all funds’ compliance with this rule is approximately \$145,168. To calculate this total annual cost, the Commission staff assumed that approximately two-thirds of the total annual hour burden (688 hours) would be incurred by compliance staff with an average hourly wage rate of \$180 per hour,<sup>9</sup> and one-third of the annual hour burden (344 hours) would be incurred by clerical staff with an average hourly wage rate of \$62 per hour.<sup>10</sup>

These burden hour estimates are based upon the Commission staff’s experience and discussions with the fund industry. 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.

<sup>7</sup> Based on statistics compiled by Commission staff, we estimate that there are approximately 4586 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (4128) actually rely on at least one exemptive rule annually.

<sup>8</sup> We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund’s management organizations or control persons. In both circumstances, it would not be necessary for the fund’s independent directors to make a determination about their counsel’s independence.

<sup>9</sup> The estimated hourly wages used in this PRA analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. See Securities Industry and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry—2007 (2007), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry—2007 (2007), modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>10</sup>  $(688 \times \$180/\text{hour}) + (344 \times \$62/\text{hour}) = \$145,168$ .

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: December 22, 2008.

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28572; 812–13615]

### Citigroup Global Markets Inc., et al.; Notice of Application and Temporary Order

December 23, 2008.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

**SUMMARY OF APPLICATION:** Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Citigroup Global Markets Inc. (“CGMI”) on December 23, 2008 by the United States District Court for the Southern District of New York (the “Injunction”), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

**APPLICANTS:** CGMI, CEFOF GP I Corp. (“CEFOF”), CELFOF GP Corp. (“CELFOF”), Citibank, N.A. (“Citibank”), Citigroup Alternative Investments LLC (“Citigroup Alternative”), Citigroup Investment