

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

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

Extension: Rule 12b-1; SEC File No. 270-188; OMB Control No. 3235-0212.

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 ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 12b-1 (17 CFR 270.12b-1) permits a registered open-end investment company ("mutual fund") to distribute its own shares and pay the expenses of distribution out of the mutual fund's assets provided, among other things, that the mutual fund adopts a written plan ("Rule 12b-1 plan") and has in writing any agreements relating to the implementation of the Rule 12b-1 plan. The rule in part requires that (i) the adoption or material amendment of a Rule 12b-1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spent under the Rule 12b-1 plan; and (iii) the board consider continuation of the Rule 12b-1 plan at least annually. Rule 12b-1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the Rule 12b-1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a Rule 12b-1 plan.

The board and shareholder approval requirements of Rule 12b-1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a Rule 12b-1 plan. The requirement of quarterly reporting to the board is designed to ensure that the Rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

The number of hours required to comply with Rule 12b-1 will vary considerably depending on several factors, including the complexity of the

plan and the number of classes of fund shares covered by the plan, and is expected to be higher in the first year following adoption of the proposed amendments than in subsequent years. Based on information filed with the Commission by funds, Commission staff estimates that there are approximately 6,536 mutual fund portfolios with Rule 12b-1 plans.

Rule 12b-1 requires the board of each fund with a Rule 12b-1 plan to (i) review quarterly reports of amounts spent under the plan, and (ii) annually consider the plan's continuation (which generally is combined with the fourth quarterly review); (iii) have each fund document the policies and procedures it has implemented to enable it to effect portfolio securities transactions through an executing broker that also distributes the fund's shares, and (iv) approve those policies and procedures.

The number of annual responses per fund portfolio will be four per year. Thus, there will be an estimated 26,144 industry responses (6,536 fund portfolios  $\times$  4 responses per fund portfolio = 26,144 responses) in the first year and in each subsequent year. Thus, we estimate that there will be an average of 26,144 industry responses per year over the three year period for which we are requesting approval of the information collection burden.

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 6,536 mutual fund portfolios that currently have a Rule 12b-1 plan, the average annual burden of complying with the rule is 100 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. The total burden hours per year for all fund portfolios to comply with current information collection requirements under Rule 12b-1, is therefore estimated to be 653,600 hours (6,536 fund portfolios  $\times$  100 hours per fund portfolio = 653,600 hours). The annual cost of the hourly burden per fund under the rule is estimated to be \$11,135.00. Thus, we estimate that the total annual cost to all funds of the Rule 12b-1 hour burden is \$72,778,360.00 (6,536 fund portfolios with Rule 12b-1 plans  $\times$  \$11,135.00 per fund portfolio = \$72,778,360.00).

If a currently operating fund seeks to (i) adopt a new Rule 12b-1 plan or (ii) materially increase the amount it spends for distribution under its Rule 12b-1 plan, Rule 12b-1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the

cost of a proxy. Based on conversations with fund industry representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a Rule 12b-1 plan. The staff further estimates that the cost of each fund's proxy is \$30,000. Thus the total annual cost burden of Rule 12b-1 to the fund industry is \$90,000 (3 funds requiring a proxy  $\times$  \$30,000 per proxy).

The collections of information required by Rule 12b-1 are necessary to obtain the benefits of the rule. Notices to the Commission 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, 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: January 22, 2007.

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55165]

### Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 608(e) Thereunder Extending a *de minimis* Exemption for Transactions in Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System

January 25, 2007.

This order extends, through March 4, 2007, a *de minimis* exemption to the provisions of the Intermarket Trading System Plan ("ITS Plan"),<sup>1</sup> a national

<sup>1</sup> The self-regulatory organizations ("SROs") participating in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the

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