

SUPPORTING STATEMENT
Rule 0-2

A. JUSTIFICATION

1. Necessity for the Collection Information

Several sections of the Investment Company Act of 1940 (“Act” or “Investment Company Act”)¹ give the Securities and Exchange Commission (“Commission”) the authority to issue orders granting exemptions from the Act’s provisions. The section that grants broadest authority is section 6(c), which provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Investment Company Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.² Congress enacted section 6(c) to give the Commission the flexibility to address unforeseen or changed circumstances in the investment company industry. Rule 0-2 under the Investment Company Act,³ entitled “General Requirements of Papers and Applications,” prescribes general instructions for filing an application seeking exemptive relief with the Commission.

Rule 0-2 requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is

¹ 15 U.S.C. 80a-1 *et seq.*

² ? 15 U.S.C. 80a-6(c).

³ 17 CFR 270.0-2.

fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0-2 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0-2 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to rule 0-2 must state the reasons why the applicant is deemed to be entitled to the action requested, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0-2 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

Proposed amendments to rule 0-2 would eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized⁴ and would eliminate the requirement that applicants include proposed notices as exhibits to applications.⁵ The amendments would also make the electronic filing of all applications for orders under the Investment Company Act mandatory.

2. Purpose of the Information Collection

⁴ See Rule 0-2(d).

⁵ See Rule 0-2(g).

Respondents to the collection are applying for orders of the Commission exempting them from one or more provisions of the Investment Company Act. The Commission uses the information required by rule 0-2 to decide whether the applicant should be deemed to be entitled to the action requested by the application.

3. Role of Improved Information Technology

Currently, applications submitted under rule 0-2 are not filed electronically; however, the proposed amendments would require all applications for orders under any section of the Investment Company Act be filed electronically on the Commission's electronic filing system (Electronic Data Gathering, Analysis and Retrieval System or "EDGAR"). EDGAR is designed to automate the filing, processing and dissemination of all disclosure filings. The system permits publicly held companies to transmit filings to the Commission electronically. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets.

4. Efforts to Identify Duplication

The Commission periodically evaluates collection of information requirements for duplication, and reevaluates them whenever it proposes a rule or form, or a change in either. The reporting requirements of rule 0-2 are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of rule 0-2 apply equally to all applicants seeking orders of the Commission exempting them from one or more provisions under the Act, regardless of size. The burden on smaller entities may be greater; however, allowing small entities to seek exemption from Investment Company Act provisions contributes to lessening the burden on these entities overall. As required by the Regulatory Flexibility Act,⁶ the Commission reviews all rules

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5 U.S.C. 601.

periodically to identify ways to minimize reporting and recordkeeping requirements that may affect small businesses.

6. Consequences of Less Frequent Collection

The requirements of rule 0-2 apply only to applications for orders from the Commission for which a form is not specifically prescribed. Applicants file applications as they deem necessary. Because the Commission has no control over the number of applications submitted, it cannot generally require less frequent collection unless it does not require the collection with respect to every application. Eliminating rule 0-2 requirements for certain or all applications would make it difficult for the Commission to review requests for exemptive relief. The Commission will, however, when it deems it necessary and appropriate, codify prior exemptive relief granted to applicants into rules, thus eliminating the need for respondents to file exemptive applications in those instances and relieving them of the requirements of rule 0-2.⁷

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

Currently, rule 0-2 requires applications to be filed in quintuplicate.⁸ Multiple copies are needed because they must be distributed to several different offices. One copy goes to the contractor to be microfilmed, one goes to the Public Reference Room, and three go to the Office within the Division of Investment Management responsible for reviewing the application.

If adopted, proposed amendments would make the electronic filing of applications under the Investment Company Act mandatory. Electronic filing would eliminate the need for multiple filings.

⁷ For example, in 2006 the Commission adopted rules 12d1-1, 12d1-2, and 12d1-3 which codified and expanded upon a number of exemptive orders issued that permit funds to invest in other funds. See Fund of Funds Investments, Investment Company Act Release No.27399 (June 20, 2006).

⁸ 17 CFR 270.0-2(b).

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements under rule 0-2 in the proposing release. Before adopting the proposed amendments, the Commission will evaluate any public comments received on the proposed amendments and the collection of information requirements.

The Commission and the staff of the Division of Investment Management also 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 to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimates of Hour Burden

Applicants for orders under the Investment Company Act can include registered investment companies, affiliated persons of registered investment companies, and issuers seeking to avoid investment company status, among other entities. Applicants file applications as they deem necessary. Commission staff estimates that it receives approximately 125 applications per year under the Investment Company Act. Although each application typically is submitted on

behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single respondent for purposes of this analysis.

The time to prepare an application depends on the complexity and/or novelty of the issues covered by the application. We estimate that the Commission receives 20 of the most time-consuming applications annually, 80 applications of medium difficulty, and 25 of the least difficult applications. Based on conversations with applicants, we estimate that in-house counsel would spend from ten to fifty hours helping to draft and review an application. We estimate a total annual hour burden to all respondents of 3,650 hours [(50 hours x 20 applications) + (30 hours x 80 applications) + (10 hours x 25 applications)] at an annual cost of \$1,065,800.⁹

The proposed amendments to rule 0-2 would, if adopted, eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized. The notary service would be provided by a secretary or similar administrative employee of the applicant or the outside counsel preparing the application and would represent a negligible cost or hour burden to the applicant, so elimination of the notarization requirement would not be likely to decrease the hour burden measurably.

The estimate of annual burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

13. Estimate of Total Annual Cost Burden

⁹ The cost estimate is based on the following calculation: 3,650 hours x \$292/hour = \$1,065,800

\$292/hour figure for an Attorney is from the SIA Report on Management & Professional Earnings in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Much of the work of preparing an application is performed by outside counsel. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required for preparation. Based on conversations with applicants and attorneys, the cost ranges from approximately \$7,000 for preparing a well-precedented, routine application to approximately \$80,000 to prepare a complex and/or novel application. We estimate that the Commission receives 20 of the most time-consuming applications annually, 80 applications of medium difficulty, and 25 of the least difficult applications. This distribution gives a total estimated annual cost burden to applicants of filing all applications of \$5,255,000 $[(20 \times \$80,000) + (80 \times \$43,500) + (25 \times \$7,000)]$.

The proposed amendments to rule 0-2 would, if adopted, eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized. The notary service would be provided by a secretary or similar administrative employee of the applicant or the outside counsel preparing the application and would represent a negligible cost or hour burden to the applicant, so elimination of the notarization requirement would not be likely to decrease the cost burden measurably.

The proposed amendments would also eliminate the requirement that applicants include proposed notices as exhibits to applications. A proposed notice is merely a summary of the statements in the application. We estimate that preparation of the proposed notice by outside counsel represents approximately 1% of the cost of preparing an application. Elimination of this requirement would reduce the estimated cost burden by approximately \$52,550 (1% of \$5,255,000).

The estimate of annual cost burden is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

14. Estimate of Cost to the Federal Government

The annual cost of reviewing and processing all applications under the Investment Company Act for orders from the Commission for exemptive relief amounted to approximately \$7 million in fiscal year 2006, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Explanation of Changes in Burden

The annual burden for this collection of information is estimated to be 3,650 hours and \$5,255,000. Proposed amendments would eliminate the proposed notice requirement, reducing the annual cost burden to \$5,202,450. Even though the cost burden will decrease if proposed amendments are adopted, the inventory burdens will increase due to our request for a new OMB control number for an existing collection.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.