

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 0-4

A. JUSTIFICATION

1. Necessity for the Collection Information

Multiple sections of the Investment Advisers Act of 1940 (“Act” or “Advisers 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 206A, which provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Advisers 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 206A to give the Commission the flexibility to address unforeseen or changed circumstances in the investment adviser industry. Rule 0-4 under the Advisers Act,³ entitled “General Requirements of Papers and Applications,” prescribes general instructions for filing an application seeking exemptive relief with the Commission.

Rule 0-4 currently 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

¹ 15 U.S.C. 80b-1 *et seq.*

² 15 U.S.C. 80b-6(a).

³ 17 CFR 275.0-4.

requirements have been complied with and that the person signing and filing the application is 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 0-4 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 0-4 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 0-4 must state the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and rules thereunder, 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 0-4 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.

Rule 0-4 contains a currently approved "collection of information," for purposes of the Paperwork Reduction Act, under Office of Management and Budget ("OMB") control number 3235-0633. 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.

2. Purpose and Use of the Information Collection

Respondents to the collection are applying for orders of the Commission exempting them from one or more provisions of the Advisers Act. The requirements of rule 0-4 are designed to provide Commission staff with the necessary information to assess whether granting the orders

of exemption are necessary and appropriate, in the public interest and consistent with the protection of investors and the intended purposes of the Act.

3. Consideration Given to Information Technology

Currently, applications subject to rule 0-4 are not permitted to be filed electronically, but the Commission may consider them for electronic filing in the future.

4. 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 0-4 are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of rule 0-4 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 Advisers Act provisions contributes to lessening the burden on these entities overall. As required by the Regulatory Flexibility Act,⁴ the Commission reviews all rules periodically to identify ways to minimize reporting and recordkeeping requirements that may affect small businesses.

6. Consequences of Not Conducting Collection

The requirements of rule 0-4 apply only to applications for orders from the Commission for which a form is not specifically prescribed. 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 0-4

⁴ 5 U.S.C. 601.

requirements for certain or all applications would make it difficult for the Commission to process and 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 0-4.

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

Rule 0-4 requires applications to be filed in quintuplicate.⁵ Multiple copies are needed because they must be distributed to several different offices within the Commission.

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 0-4 before it submitted this request for extension to the Office of Management and Budget. The Commission received no comments in response to its request.

The Commission and the staff of the Division of Investment Management also participate in an ongoing dialogue with representatives of the investment adviser 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

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

⁵ 17 CFR 275.0-4(b).

Not applicable.

12. Burden of Information Collection

Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no hourly burden on the respondents. Nevertheless, the Commission requests approval for one burden hour for administrative purposes. 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. Costs to Respondents

Applicants for orders under the Advisers Act can include registered investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. Commission staff estimates that it receives up to 9 applications per year submitted under rule 0-4 of the Act seeking relief from various provisions of the Advisers Act and, in addition, up to 7 applications per year submitted under Advisers Act rule 206(4)-5, which addresses certain “pay to play” practices and also provides the Commission the authority to grant applications seeking relief from certain of the rule’s restrictions.⁶ Although each application typically is submitted on behalf of multiple applicants, the applicants in the vast majority of cases are related entities and are treated as a single respondent for purposes of this analysis. Most 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. Based on conversations with applicants and attorneys, and

⁶ See 17 CFR 275.206(4)-5(e) (providing the Commission authority, upon application, to exempt an adviser from certain of the rule’s restrictions, and providing a non-exclusive list of factors the Commission will consider when evaluating these applications).

recent analyses by the Commission,⁷ the cost for applications ranges from approximately \$12,800 for preparing a well-precedented, routine (or otherwise less involved) application to approximately \$200,000 to prepare a complex or novel application. We estimate that the Commission receives 2 of the most time-consuming applications annually, 4 applications of medium difficulty, and 10 of the least difficult applications subject to rule 0-4.⁸ This distribution gives a total estimated annual cost burden to applicants of filing all applications of \$702,000 [(2x\$200,000) + (4x\$43,500) + (10x\$12,800)]. 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

Not applicable.

15. Changes in Burden

There is no change in hour burden. Rule 0-4 imposes no hourly burden, however we are continuing to request 1 hour for administrative purposes. The estimated annual cost burden for this collection of information has increased from \$444,600 to \$702,000 to reflect more recent Commission estimates of the costs to prepare certain exemptive applications.

⁷ See *Family Offices*, Investment Advisers Act Release No. 3220 (June 22, 2011), at section IV.A (“We estimate that a typical family office will incur legal fees of \$200,000 on average to engage in the exemptive order application process, including preparation and revision of an application and consultations with Commission staff.”) Although the Commission may receive fewer exemptive applications from family offices in light of rule 202(a)(11)(G)-1, which defines family offices that are now excluded from regulation under the Advisers Act, the costs to prepare family office applications may be representative of the costs required to prepare other more complex and novel applications. See also *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Release No. 3043 (July 1, 2010), at section V.D. (estimating that applications filed under Advisers Act rule 206(4)-5 “will cost approximately \$12,800”).

⁸ The estimated 10 least difficult applications include the estimated 7 applications per year submitted under Advisers Act rule 206(4)-5. The Commission previously estimated that these applications will cost approximately \$12,800 each. *Id.*

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.