

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
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(c)(1) 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. 80a-1 *et seq.*

² 15 U.S.C. 80a-6(c).

³ 17 CFR 270.0-2.

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 0-2(c)(1) 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 executing an instrument 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. Electronic filing of all applications for orders under the Investment Company Act is mandatory.

On June 28, 2018, the Commission proposed new rule 6c-11 that would permit Exchange-Traded Funds ("ETFs") that satisfy the conditions of the rule to operate without the need to obtain an exemptive order from the Commission under the Act pursuant to rule 0-2. Therefore, proposed rule 6c-11 would alleviate some of the burdens associated with rule 0-2 because it would reduce the number of entities that require exemptive relief in order to operate.

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 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. Consideration Given to Information Technology

All applications for orders under any section of the Investment Company Act must 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. 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,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

⁴ 5 U.S.C. 601.

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 0-2.⁵

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

Not applicable.

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management 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. Before adopting proposed rule 6c-11, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements, including those related to rule 0-2.

9. Payment or Gift

⁵ 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) [71 FR 36640 (June 27, 2006)].

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

No PII collected/Not applicable. A System of Records Notice for applications under the Investment Company Act can be found at <https://www.sec.gov/about/privacy/sorn/secsorn2.pdf>.

12. Burden of Information Collection

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 184 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 25 of the most time-consuming applications annually, 125 applications of medium difficulty, and 34 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 previously estimated that the total annual hour burden to all respondents of 5,340 hours [(50 hours x 25 applications) + (30 hours x 125 applications) + (10 hours x 34 applications)] at an annual cost of \$2,029,200.⁶

⁶ The cost estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2016.

As discussed above, proposed rule 6c-11 would alleviate some of the burdens associated with rule 0-2 because it would reduce the number of entities that require exemptive relief in order to operate.⁷ Based on staff experience, we estimate that approximately one-third of the annual burdens associated with rule 0-2 are attributable to ETF applications. Therefore, we estimate that proposed rule 6c-11 would result in a decrease of the annual burden of rule 0-2 to approximately 3,738⁸ hours at an annual time cost of \$1,420,440.42.⁹

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. Cost to Respondents

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 attorneys who serve as outside counsel, the cost ranges from approximately \$10,000 for preparing a well-precedented, routine application to approximately \$150,000 to prepare a complex and/or novel application. We estimate that the Commission receives 25 of the most time-consuming applications annually, 125 applications of medium difficulty, and 34 of the least difficult applications. This distribution gives a total estimated annual cost burden to applicants of filing all applications of \$14,090,000 [(25 x \$150,000) + (125 x \$80,000) + (34 x \$10,000)].

⁷ We expect to continue to receive applications for complex or novel ETF exemptive relief that are beyond the scope of proposed rule 6c-11.

⁸ This estimate is based on the following calculation: 5,340 hours – (5,340 hours x 0.3) = 3,738 hours.

⁹ This estimate is based on the following calculation: \$2,029,200.60 – (\$2,029,200.60 x 0.3) = \$1,420,440.42.

Proposed rule 6c-11 also would alleviate some of the annual cost burdens associated with rule 0-2. As discussed above, and based on staff experience, we estimate that approximately one-third of the annual cost burdens associated with rule 0-2 are attributable to ETF applications. Therefore, we estimate that proposed rule 6c-11 would result in a decrease of the annual cost burden of rule 0-2 to \$9,863,000.¹⁰

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. 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 \$9.3 million in fiscal year 2017, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

The annual burden for this collection of information is estimated to be 3,738 hours and \$9,863,000. The annual hour burden decreased by 1,602 hours, and the annual cost burden decreased by approximately \$4.23 million, because the number of applications decreased by one-third.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

¹⁰ This estimate is based on the following calculation: $\$14,090,000 - (\$14,090,000 \times 0.3) = \$9,863,000$.

18. Exceptions to Certification Statement for Paperwork Reduction Act

Submission

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.