

**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”)<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> 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

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<sup>1</sup> 15 U.S.C. 80b-1 *et seq.*

<sup>2</sup> 15 U.S.C. 80b-6(a).

<sup>3</sup> 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,<sup>4</sup> 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

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<sup>4</sup> 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.<sup>5</sup> Multiple copies are needed because they must be distributed to several different Offices within the Commission.

**8. Consultation With Persons 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. Assurance of Confidentiality**

Not applicable.

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<sup>5</sup> 17 CFR 275.0-4(b).

**11. Sensitive Questions**

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.

**Table 1: Summary of Annual Responses, Burden Hours, and Burden Hour Costs Estimates under Rule 0-4**

IC	Rule 0-4 under the Investment Advisers Act of 1940	Annual No. of Responses			Annual Time Burden (Hrs.)			Monetized Time Burden (\$)		
		<i>Previously approved</i>	<i>Requested Change Due to Agency Discretion</i>	<i>Total</i>	<i>Previously approved</i>	<i>Requested Change Due to Agency Discretion</i>	<i>Total</i>	<i>Previously approved</i>	<i>Requested Change Due to Agency Discretion</i>	<i>Total</i>
	Description of Parts of IC									
IC1	Rule 0-4 under the Investment Advisers Act of 1940, General Requirements of Papers and Applications	12	7	-5	1	0	1	\$402,200	\$392,500	-\$9,700
<b>Total for IC</b>		<b>12</b>	<b>7</b>	<b>-5</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>\$402,200</b>	<b>\$392,500</b>	<b>-\$9,700</b>

**13. Cost 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 four 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 three 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.<sup>6</sup>

Although some applications are submitted on behalf of multiple applicants, these 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, the cost for applications ranges from approximately \$13,600 for preparing a well-precedented, routine (or otherwise less involved) application to approximately \$212,800 to prepare a complex or novel application. We estimate that the Commission receives one of the most time-consuming applications annually, three applications of medium difficulty, and three of the least difficult applications subject to rule 0-4.<sup>7</sup> This distribution gives a total estimated annual cost burden to applicants of filing all applications of \$392,500 [(1x\$212,800) + (3x\$46,300) + (3x\$13,600)]. 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 Advisers Act for Orders from the Commission for exemptive relief amounted to approximately \$638,280 in fiscal

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<sup>6</sup> 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). Based on IARD system data, between 2016 and 2018, nineteen advisers (6.33 advisers per year) filed applications seeking relief from various provisions of the Advisers Act, eight (2.67 advisers per year) of which were submitted under Advisers Act rule 206(4)-5, and the remaining eleven (3.67 adviser per year) requesting relief from other provisions of the Advisers Act.

<sup>7</sup> The estimated 3 least difficult applications include the estimated 3 applications per year submitted under Advisers Act rule 206(4)-5.

year 2018, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.<sup>8</sup>

**15. Changes in Burden**

There is no change in hour burden. Rule 0-4 imposes no hourly burden, however we are continuing to request one hour for administrative purposes. The estimated annual cost burden for this collection of information has decreased from \$402,200 to \$392,500 to reflect more recent Commission estimates of the costs to prepare certain exemptive applications.

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to Omit OMB Expiration Date**

Not applicable.

**18. Exceptions to Certification Statement for Paperwork Reduction Act**

**Submissions**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.

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<sup>8</sup> The annual cost is based on an inflated-adjusted factor of 1.0638 (obtained using the same CPI calculator as the "SIFMA Management and Professional Earnings Report" estimates) and comparing 2016 rates to the most recent available data.  $\$600,000 \times 1.0638 = \$638,280$ .