

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 0-2

A. JUSTIFICATION

1. Necessity for the Information Collection

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 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

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-6(c).

³ 17 CFR 270.0-2.

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 September 25, 2019, the Commission issued a release adopting a new rule that will permit exchange-traded funds (“ETFs”) that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order.⁴

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,⁵ the Commission reviews all rules periodically to identify ways to minimize reporting and recordkeeping requirements that may affect small businesses.

⁴ Exchange-Traded Funds, Investment Company Act Release No. 33646 ([Sept. 25], 2019) [84 FR 57162 (Oct. 24, 2019)].

⁵ 5 U.S.C. 601.

6. Consequences of Not Conducting 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 0-2.⁶

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. The Commission requested public comment on the collection of information requirements of rule 0-2 before it submitted the request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). A System of Records Notice for applications under the

⁶ 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)].

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.

Rule 6c-11 will permit ETFs that satisfy the conditions of the rule to operate without the need to obtain an exemptive order from the Commission under the Act.⁷ Therefore, rule 6c-11 will alleviate some of the burdens associated with rule 0-2 because it will reduce the number of entities that require exemptive relief in order to operate. Based on staff experience, we estimate that approximately one-third (rounded to 30%) of the annual burdens, both internal and external, associated with rule 0-2 are attributable to ETF applications.

TABLE 1: RULE 0-2 PRA ESTIMATES

	Annual hours	Annual internal time cost	Annual external cost burden ⁸
Rule 0-2 burdens currently approved	x = 5,340	y = \$2,029,200.60	z = \$14,090,000
Estimated effect of rule 6c-11 on rule 0-2 burdens	- 0.3(x)	- 0.3(y)	- 0.3(z)
Revised estimated burden	3,738 hours	\$1,420,440.42	\$9,863,000

⁷ See *supra* footnote 4 and accompanying text.

⁸ See *infra* section 13.

TABLE 2: CHANGE IN RULE 0-2 PRA ESTIMATES

Annual Number of Responses	
Previously approved:	184
Requested:	184
Change:	0
Annual Time Burden (Hours)	
Previously approved:	5,340 hours
Requested:	3,738 hours
Change:	-1,602 hours
Annual Cost Burden (\$)	
Previously approved:	\$14,090,000
Requested:	\$9,863,000
Change:	-\$4,227,000

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 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. The approved total estimated annual cost burden to applicants of filing all applications is \$14,090,000. As discussed above, based on staff experience, we estimate that approximately one-third (rounded to 30%) of the annual burdens, both internal and external, associated with rule 0-2 are attributable to ETF applications. As shown in Table 1 above, we estimate that the total estimated annual cost burden will decrease to \$9,863,000.

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. 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 \$9.6 million in fiscal year 2018, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

The estimated hourly burden associated with rule 0-2 decreased from 5,340 hours to 3,738 hours (a decrease of 1,602 hours), and the estimated annual cost burden decreased from \$14,090,000 to \$9,863,000 (a decrease of \$4,227,000).⁹ These decreases are due to our

⁹ See *supra* Table 2.

adoption of rule 6c-11, which we believe will decrease the hour and cost burdens associated with rule 0-2.

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 Submission

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.