

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 0-5

A. JUSTIFICATION

1. Necessity for the Collection Information

On October 18, 2019, the Commission proposed amendments to rule 0-5 under the Investment Company Act of 1940 (the “Act”) to establish an expedited review procedure for applications that are substantially identical to recent precedent as well as a new rule to establish an internal timeframe for review of applications outside of such expedited procedure.¹ In addition, the Commission proposed amendments to rule 0-5 under the Act to deem an application outside of expedited review withdrawn when the applicant does not respond in writing to comments within 120 days. We discuss below the mandatory collection of information burdens associated with the proposed rule 0-5(e) concerning the expedited review procedure and the proposed rule 0-5(g) regarding applications deemed withdrawn.

Proposed rule 0-5(e) requires applicants seeking expedited review to include certain information with the application. Proposed rule 0-5(e)(1) requires that the cover page of the application include a notation prominently stating “EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0-5(d).” Proposed rule 0-5(e)(2) requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of two precedent applications identified as substantially identical. Proposed rule 0-5(e)(3) requires an accompanying cover letter, signed, on behalf of the applicant, by the person executing the application (i) identifying two substantially identical applications; and (ii) certifying that that the

¹ See Amendments to Procedures With Respect to Applications under the Investment Company Act of 1940, Investment Company Act Release No. 33658 (October 18, 2019).

applicant believes the application meets the requirements of rule 0-5(d) and that the marked copies required by rule 0-5(e)(2) are complete and accurate.

Proposed rule 0-5(g) would provide that, if an applicant has not responded in writing to a request for clarification or modification of an application filed under standard review within 120 days after the request, the application will be deemed withdrawn. As an oral response would not stop an application from being deemed withdrawn, proposed rule 0-5(g), would require applicants to respond “in writing” and therefore create an additional cost within the meaning of the PRA.

The proposed rule amendments under the Act contain “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).² The title for the new collection of information is “Rule 0-5 under the Investment Company Act of 1940, Procedure with Respect to Applications and Other Matters.” The Commission is submitting these collections of information to the OMB for review in accordance with 44 U.S.C. 3507 (d) and 5 CFR 1320.11.

2. Purpose and Use of the Information Collection

Respondents to the collection are applying for orders from the Commission under one or more provisions of the Act. The Commission uses the information required by rules 0-5(e) and 0-5(g) to decide whether the applicant should be deemed to be entitled to the action requested by the applicant.

3. Consideration Given to Information Technology

All applications for orders under any section of the 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

² 44 U.S.C. 3501 through 3521.

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. All applicants would also be permitted to deliver any written responses electronically, which is consistent with the Commission's guidance regarding electronic delivery.³

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 rules 0-5(e) and 0-5(g) are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of rules 0-5(e) and 0-5(g) apply equally to all applicants seeking orders from the Commission under one or more provisions under the Act, regardless of size. Small entities will considerably benefit from the expedited review procedure as the total estimated savings significantly justify the estimated added burden under proposed rule 0-5(e). Proposed rule 0-5(g) imposes additional costs and administrative burdens on small entities for standard review applications, but the estimated savings from the expedited review process would justify the added burden of rule 0-5(g). 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.

³ See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)]. See also Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)]; and Use of Electronic Media for Delivery Purposes, Exchange Act Release No. 36345 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)].

⁴ 5 U.S.C. 601.

6. Consequences of Not Conducting Collection

The requirements of rules 0-5(e) and 0-5(g) 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 rules 0-5(e) and 0-5(g) requirements for certain or all applications would make it difficult for the Commission to review requests for relief. The Commission will, however, when appropriate, codify prior relief granted to applicants into rules, thus eliminating the need for respondents to file applications in those instances and relieving them of the requirements of rules 0-5(e) and 0-5(g).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, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements.

9. Payment or Gift

Not applicable.

⁵ See Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) and Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) (proposed rule).

10. Confidentiality

Not applicable.

11. Sensitive Questions

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

12. Burden of Information Collection

Applicants for orders under the Act can include investment companies and affiliated persons of investment companies. Applicants file applications as they deem necessary. The Commission receives approximately 140 applications per year under the Act, and of the 140 applications, we estimate to receive approximately 50 applications⁶ seeking expedited review under the Act. Although each application is typically submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single applicant for purposes of this analysis. Each application subject to rules 0-5(e) and 0-5(g) does not impose any ongoing obligations or burdens on the part of an applicant.

Much of the work of preparing an application is performed by outside counsel. Based on conversations with applicants and Staff experience, approximately 20 percent of applications are prepared by in-house counsel.

The new mandatory requirements under rule 0-5(e) would increase the estimated hour or cost burden for applicants utilizing in-house counsel by 5.5 hours⁷ or \$2,156⁸ per application.

⁶ This estimate takes into account the recent codification of certain ETF Exemptive Orders. *See supra* note 23.

⁷ This estimate is based on the following calculation: 5 hours (estimated hours per application to prepare the marked copies) + 0.5 hour (estimated hour per application to notate and certify) = 5.5 hours.

⁸ This estimate is based on the following calculation:

Therefore, the new mandatory requirements under rule 0-5(e) would increase the total estimated annual hour burden by approximately 55 hours utilizing in-house counsel.⁹ The total estimated annual cost burden for utilizing in-house counsel would be \$21,560.¹⁰

We estimate to receive approximately 90 applications¹¹ per year seeking standard review under the Act and of the 90 applications, we estimate that in approximately 10 percent of those, the applicants would respond “in writing” to avoid that the application be deemed withdrawn pursuant to rule 0-5(g). We believe the “in writing” requirement under rule 0-5(g) would increase the burden for Applicants utilizing in-house counsel by 2 hours or \$784 per application.¹² Therefore, the “in writing” requirement under rule 0-5(g) would increase the total

5 (estimated hours per application to prepare the marked copies) x \$392 (hourly rate for an in-house counsel) = \$1,960.

0.5 (estimated hour per application to notate and to certify) x \$392 (hourly rate for an in-house counsel) = \$196.

\$1,960 (estimated cost per application to prepare the marked copies) + \$196 (estimated cost per application to notate and certify) = \$2,156.

The hourly wages data is from the Securities Industry Financial Markets Association’s Management & Professional Earnings in the Securities Industry 2013, modified by Commission Staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) to account for bonuses, firm size, employee benefits, and overhead, suggests that the cost for in-house counsel is \$392 per hour.

⁹ This estimate is based on the following calculations:

[5 (estimated hours per application to prepare the marked copies) + 0.5 (estimated hour per application to notate and certify)] x 50 (estimated number of applications under expedited review) x 0.20 (approximate percentage of applications prepared by in-house counsel) = 55.

¹⁰ This estimate is based on the following calculation: 55 (estimated total hours utilizing in-house counsel) x \$392 (hourly rate for an in-house counsel) = \$21,560.

¹¹ This estimate is based on the following calculation: 140 (estimated number of all applications) – 50 (estimated number of applications under expedited review) = 90.

¹² This estimate is based on the following calculation: 2 (estimated hours to prepare “in writing” response) x \$392 (hourly rate for an in-house counsel) = \$784.

estimated annual hour burden by approximately 3.6 hours utilizing in-house counsel.¹³ The total estimated annual cost burden utilizing in-house counsel would be \$1,411.20.¹⁴

The following table summarizes the estimated effects of the proposed amendments on the paperwork burden associated with the amendments to rules 0-5(e) and 0-5(g).

Table 1. Estimated Paperwork Burden Increase of the Proposed Amendments.

	No. of Annual Responses	Burden Hours	Annual Burden Hour Costs
Rule 0-5(e)	10 ¹⁵	5.5	\$21,560 ¹⁶
Rule 0-5(g)	1.8 ¹⁷	2	\$1411.20 ¹⁸
Totals	11.8	7.5	\$22,971.20

13. Cost to Respondents

As discussed above, much of the work of preparing an application is performed by outside counsel. Based on conversations with applicants and Staff experience, approximately 80 percent of applications are prepared by outside counsel.

Therefore, the new mandatory requirements under rule 0-5(e) would increase the estimated cost and administrative burdens for applicants utilizing outside counsel by \$2,733.50¹⁹

¹³ This estimate is based on the following calculations:

2 (estimated hours to prepare “in writing” response) x 90 (estimated number of applications under standard review) x 0.10 (approximate percentage of application required to respond “in writing”) x 0.20 (approximate percentage of applications prepared by in-house counsel) = 3.6.

¹⁴ This estimate is based on the following calculation: 3.6 (estimated total hours utilizing in-house counsel) x \$392 (hourly rate for an in-house counsel) = \$1,411.20.

¹⁵ This estimate is based on the following calculations: 50 (estimated number of applications under expedited review) x 0.20 (approximate percentage of applications prepared by in-house counsel) = 10.

¹⁶ See supra note 10.

¹⁷ This estimate is based on the following calculations: 90 (estimated number of applications under standard review) x 0.10 (approximate percentage of application required to respond “in writing”) x 0.20 (approximate percentage of applications prepared by in-house counsel) = 1.8.

¹⁸ See supra note 14.

per application and the total estimated annual cost burden by approximately \$109,340 utilizing outside counsel.²⁰

We believe the “in writing” requirement would increase the burden by \$994 per application for applicants relying on outside counsel.²¹ Therefore, the “in writing” requirement under rule 0-5(g) would increase the total estimated annual cost burden by approximately \$7,157 utilizing outside counsel.²²

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.

¹⁹ This estimate is based on the following calculation:

5 (estimated hours to prepare the marked copies) x \$497 (hourly rate for an attorney) = \$2,485.

0.5 (estimated hour per application to notate and to certify) x \$497 (hourly rate for an attorney) = \$248.50.

\$2,485 (estimated cost per application to prepare the marked copies) + \$248.50 (estimated cost per application to notate and certify) = \$2,733.50.

The hourly wages data is from the Securities Industry Financial Markets Association’s Management & Professional Earnings in the Securities Industry 2013, modified by Commission Staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) to account for bonuses, firm size, employee benefits, and overhead, suggests that the cost for outside counsel is \$497 per hour.

²⁰ This estimate is based on the following calculations:

[\$2,485 (estimated cost per application to prepare the marked copies) + \$248.50 (estimated cost per application to notate and certify)] x 50 (estimated number of applications under expedited review) x 0.80 (approximate percentage of applications prepared by outside counsel) = \$109,340.

²¹ This estimate is based on the following calculation: 2 (estimated hours to prepare “in writing” response) x \$497 (hourly rate for outside counsel) = \$994.

²² This estimate is based on the following calculations:

\$994 (estimated cost per application to prepare “in writing” response) x 90 (estimated number of applications under standard review) x 0.10 (approximate percentage of application required to respond “in writing”) x 0.80 (approximate percentage of applications prepared by outside counsel) = \$7,157.

The following table summarizes the estimated external costs of the proposed amendments on the paperwork burden associated with the amendments to rules 0-5(e) and 0-5(g).

PRA Table 2. Estimated External Costs of the Proposed Amendments.

	No. of Annual Responses	Annual External Costs
Rule 0-5(e)	40 ²³	\$109,340 ²⁴
Rule 0-5(g)	7.2 ²⁵	\$7,157 ²⁶
Totals	47.2	\$116,497

14. Cost to the Federal Government

There are no costs to the government directly attributable to proposed amendments to rule 0-5.

15. Changes in Burden

This is the first request for approval of the collection of information for this rule.

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.

²³ This estimate is based on the following calculations: 50 (estimated number of applications under expedited review) x 0.80 (approximate percentage of applications prepared by outside counsel) = 40.

²⁴ See supra note 20.

²⁵ This estimate is based on the following calculations: 90 (estimated number of applications under standard review) x 0.10 (approximate percentage of application required to respond "in writing") x 0.80 (approximate percentage of applications prepared by outside counsel) = 7.2.

²⁶ See supra note 22.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.