

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 (“Advisers Act”)¹ give the Securities and Exchange Commission (“Commission”) the authority to issue Orders granting exemptions from the Advisers Act’s provisions. The section that grants broadest authority is section 206A, which provides the Commission with authority to conditionally or unconditionally exempt any person or transaction, or any class or classes of persons, 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 Advisers 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, prescribes general instructions for filing an application seeking exemptive relief with the Commission.³ 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, and is titled “Rule 0-4 under the Investment Advisers Act of 1940, General Requirements of Papers and Applications.” 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.

¹ 15 U.S.C. 80b-1 *et seq.*

² 15 U.S.C. 80b-6(a).

³ 17 CFR 275.0-4.

On November 4, 2021, the Commission proposed amendments to rule 0-4.⁴ The proposed amendments would require that every application for an order under any provision of the Advisers Act, for which a form with instructions is not specifically prescribed, and every amendment to such application be electronically filed pursuant to Regulation S-T, rather than in paper format, as is currently required. The proposed amendments also would eliminate the requirements to have verifications of applications and statements of facts made in connection with applications notarized and would eliminate the requirement that applications include proposed notices as exhibits to applications. In addition, the proposed amendments would specify that paper submissions should be addressed to the Secretary of the Commission, remove the reference to microfilming, and clarify the wording related to duplicate original copies of paper applications.

Respondents to the collection of information 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 is necessary and appropriate, in the public interest, and consistent with the protection of investors and the intended purposes of the Advisers Act. This collection of information is necessary in order to obtain or retain benefits. Responses will not be kept confidential.

⁴ See Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F, Advisers Act Release No. 5903 (Nov. 4, 2021) (“Proposing Release”).

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 Advisers Act.

3. Consideration Given to Information Technology

Under the proposed amendments, rule 0-4 would require an applicant seeking Advisers Act relief to submit its application electronically to the Commission through the Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system.

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

⁵ 5 U.S.C. 601 *et seq.*

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 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)

Not applicable.

8. Consultation With Persons Outside the Agency

The Commission requested public comment on the proposed amendments to the collection of information requirements in Form ADV-NR.⁶ Comments are due 30 days after publication in the *Federal Register*.

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.

⁶ See Proposing Release, *supra* footnote 4.

9. Payment or Gift

Not applicable.

10. Assurance of Confidentiality

Not applicable.

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. We do not believe that the proposed amendments would change the burden on applicants. Likewise, we do not believe that our proposed amendments would change the number of such applications that are filed annually. Therefore, because there will continue to be no internal hourly burden we believe that the current initial and annual hour burdens for such applications remain appropriate. 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

Applicants for orders under the Advisers Act file applications as they deem necessary. 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. The Commission estimates that it receives seven initial

applications per year submitted under rule 0-4 of the Advisers Act.⁷ 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.

We are proposing to decrease the external costs associated with the existing collection of information for rule 0-4 to reflect the proposed amendments; however, our estimated cost burden would increase, taking into account an increased baseline.⁸ The proposed amendments would eliminate the requirement to notarize applications. The notary service is typically provided by a secretary or similar administrative employee of the applicant or the outside counsel preparing the application and represents a negligible hour or cost burden to the applicant, so elimination of the notarization requirement would reduce the cost burden only a small amount. However, we believe that these cost savings would be offset by the costs associated with transitioning to an electronic submission process, such as updating policies and procedures, recordkeeping methods and time spent learning to use the EDGAR system. The proposed amendments would require that paper submissions under rule 0-4 be addressed to the Secretary of the Commission, remove the reference to microfilming and clarify the wording related to duplicate original copies of paper applications. These amendments would decrease the applicant's cost burden. However, we believe that these cost savings would also be offset by the time and costs associated with transitioning to an electronic submission process. The proposed amendments also would eliminate the requirement that applicants include proposed notices as exhibits to applications. A proposed notice is a summary of the statements in the application. Based on staff experience, we

⁷ See e.g., 17 CFR 275.206(4)-5(e) (providing that the Commission may, upon application, 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).

⁸ We most recently estimated the annual cost burden to applicants of filing all applications to be \$392,500.

believe that preparation of the proposed notice by outside counsel represents approximately 1% of the cost of preparing an application. We estimate that the total reduction in the external costs would be approximately \$4,091.⁹ However, the as discussed in the table below, we estimate the baseline costs would increase; therefore, although the proposed amendments decrease external costs, our estimated cost burden would increase, taking into account the increased baseline.

Table 1: Proposed cost burden estimates to applicants applying for exemptive relief under proposed rule 0-4

	Types of applications	Current external cost burden per filing ¹	Estimated reduction in external cost ²	Estimated external cost burden per filing		Number of applications ³	Estimated external cost burden per filing type
Adviser Act Exemptive Applications	Well Precedented Applications	\$14,182 ⁴	\$(141)	\$14,041	x	3	\$42,123
	Medium Complexity Applications	\$48,282	\$(483)	\$47,799		3	\$143,397
	High Complexity Applications	\$221,909	\$(2,219)	\$219,690		1	\$219,690
				Total estimated annual external cost burden for Advisers Act Applications:			\$405,210

Notes:

1. Based on conversations with applicants and attorneys, the cost for applications ranges from approximately \$14,182 for preparing a well-precedented, routine (or otherwise less involved) application, \$48,282 for preparing medium complex applications and approximately \$221,909 to prepare a complex or novel application.
2. We estimate that preparation of the proposed notice by outside counsel represents approximately 1% of the cost of preparing an application.
3. We estimate that the Commission annually receives three of the well-precedented applications, three applications of medium complexity, and one high complexity applications.
4. 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 \$14,182 for preparing a well-precedented, routine (or otherwise less involved) application to approximately \$221,909 to prepare a complex or novel application. \$48,282 is the median between \$14,182 and \$221,909. Supporting Statement for “Rule 0-4 under the Investment Advisers Act of 1940, General Requirements of Papers and Applications” (OMB Control No. 3235-0633). We have adjusted these numbers to reflect changes in prices from the 2019 estimates based on the U.S. Bureau of Labor Statistic’s CPI Inflation calculator. We estimate that the Commission receives one of the most time-consuming applications annually, three applications of medium complexity, and three of the least complex applications subject to rule 0-4. There are no ongoing expenses.

⁹ The total external cost reduction of 1% would amount to \$4,091 given the estimated distribution of all applications: $(\$141 \times 3) + (\$483 \times 3) + (\$2,219 \times 1) = \$4,091$. See Table 1.

Table 2: Summary of the Annual Number of Responses, Time Burden, and Cost Burden

Description	Requested	Previously Approved	Change
Responses	7	7	0
Time burden (Hours) ¹⁰	1	1	0
Cost Burden (Dollars) ¹	\$405,210	\$392,500	\$12,710

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 \$692,357 in fiscal year 2021, based on the Commission’s computation of the value of staff time devoted to this activity and related overhead.¹¹

15. Changes in Burden

There is no change in the hourly 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 would increase by \$12,710 from \$392,500 to \$405,210. Although we expect the proposed amendments would decrease the cost burden, the cost burden would increase due to updated data concerning baseline costs.

16. Information Collection Planned for Statistical Purposes

Not applicable.

¹⁰ See Section 12 above, discussing that rule 0-4 imposes no hourly burden; however, we are continuing to request one hour for administrative purposes.

¹¹ Using the previously approved amount of \$638,280 from October 2018, we used the CPI inflation calculator from the U.S. Bureau of Labor Statistics to calculate that this amount has the same buying power as \$692,356.55 in September 2021. The U.S. Bureau of Labor Statistics CPI inflation calculator is *available at* https://www.bls.gov/data/inflation_calculator.htm.

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.