

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”) give the Securities and Exchange Commission (“Commission”) the authority to issue orders granting exemptions from the Advisers Act’s provisions.¹ The section that grants the 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

¹ 15 U.S.C. 80b-1 *et seq.* See *e.g.*, 17 CFR 275.206(4)-5(e) (providing that the Commission may, upon application, exempt an adviser from certain prohibitions of a rule concerning political contributions, and providing a non-exclusive list of factors the Commission will consider when evaluating these applications).

² 15 U.S.C. 80b-6(a).

³ 17 CFR 275.0-4.

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.

On June 23, 2022, the Commission adopted amendments rule 0-4.⁴ Final rule 0-4 will 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. Final rule 0-4 will eliminate the requirements to have verifications of applications and statements of fact made in connection with applications notarized and will eliminate the requirement that applications include proposed notices as exhibits to applications. In addition, final rule 0-4 will specify that paper submissions must 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. Applicants for such orders can include registered investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. 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 or 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. 6056 (June 23, 2022) (“Adopting 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 or 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

Final rule 0-4 will 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 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. If we were to exempt small entities from the information collection requirements, it would be difficult for Commission staff to obtain the necessary information to assess whether granting orders of exemption for such entities would be necessary or appropriate in the public interest and consistent with the protection of investors and the intended purposes of the Advisers Act. Therefore, it would defeat the purpose of rule 0-4 to exempt small entities from the information collection requirements. The information collection requirements will not affect most investment advisers that are small entities because they generally are registered with one or more state securities

authorities and not with the Commission.⁵ Investment advisers that manage less than \$100 million in regulatory assets under management generally are prohibited from registering with the Commission and register with state securities authorities.⁶ As required by the Regulatory Flexibility Act, the Commission reviews all rules periodically to identify ways to minimize reporting and recordkeeping requirements that may affect small businesses.⁷

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. Applicants for orders under the Advisers Act file applications as they deem necessary; therefore, the Commission has no control over the number of applications submitted. As a result, the Commission generally cannot require a 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 or appropriate, codify prior exemptive relief into rules to eliminate the need for respondents to file exemptive applications in those instances, and relieve them of rule 0-4 requirements.

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

Not applicable.

⁵ Under Advisers Act Rule 0-7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (1) has assets under management of less than \$25 million; (2) did not have total assets of \$5 million or more on the last day of its most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year. 17 CFR 275.0-7.

⁶ See 15 U.S.C. 80b-3a.

⁷ 5 U.S.C. 601 *et seq.*

8. Consultation With Persons Outside the Agency

The Commission's solicitation of public comments included estimating and requesting public comments on the burden estimates for all information collections under this OMB control number (*i.e.*, both changes associated with the rulemaking and other burden updates).⁸ The Commission received comments on the proposed amendments, which it discussed in the Adopting Release; however, none of the comments concerned the proposed burden estimates.⁹

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 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.

11. Sensitive Questions

Not applicable.

12. Burden of Information Collection

Applicants for orders under the Advisers Act file applications as they deem necessary.

The Commission continues to estimate that it receives seven initial applications per year

⁸ 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) [86 FR 64839 (Nov. 19, 2021)]. Comment letters are available at <https://www.sec.gov/comments/s7-15-21/s71521.htm>.

⁹ See Adopting Release, *supra* footnote 4.

submitted under rule 0-4 of the Advisers Act. 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 do not believe that the amendments will change the number of such applications that are filed annually.

Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no time burden on the respondents. Nevertheless, the Commission requests approval for one burden hour for administrative purposes. We do not believe that the amendments will change the time burden on applicants; therefore, we believe that the current hour burden for administrative purposes remains appropriate. The time burden estimate is made solely for the purposes of the Paperwork Reduction Act, and is not derived burden hours from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Table 1: Summary of the Annual Number of Responses, Time Burden, and External Cost Burden

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

13. Cost to Respondents

Although we expect the amendments will decrease the external cost burden for respondents as a practical matter, our estimated external cost burden will increase due to using

¹⁰ See *infra* Item 13 (Cost to Respondents).

updated data for baseline costs.¹¹ The amendments will 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. It represents an hour to the applicant, so elimination of the notarization requirement would reduce the external cost burden only by a negligible amount. The amendments will 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, which will not change any external cost burdens for applicants. The amendments will eliminate the requirement that applicants include proposed notices as exhibits to applications, which will reduce external cost burdens for applicants. A proposed notice is a summary of the statements in the application. Based on staff experience, we believe that preparation of the proposed notice by outside counsel represents approximately one percent of the external cost of preparing an application.¹² We estimate that the total reduction in the external costs will be approximately \$4,091.¹³ However, as discussed in the table below, we estimate that the baseline external costs will increase; therefore, although the amendments will decrease external costs, our estimated external cost burden will increase, taking into account the increased baseline.

¹¹ The previously approved annual external cost burden is \$392,500.

¹² *See* Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E, Securities Act Release No. 8981 (Oct. 29, 2008) [73 FR 65516 (Nov. 4, 2008)].

¹³ The total external cost burden reduction of one percent 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 2.

Table 2: Annual External Cost Burden Estimates

	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
Advisers 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
Annual external cost burden:							\$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 preparing a proposed notice by outside counsel represents approximately one percent of the cost of preparing an application.
3. Based on our experience, we estimate that the Commission annually receives three well-precedented applications, three applications of medium complexity, and one high complexity application.
4. The cost that 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. We have adjusted these numbers to reflect changes in prices from the previously approved estimates based on the U.S. Bureau of Labor Statistic’s CPI Inflation calculator. We estimate that the Commission receives one highly complex, time-consuming application annually, three applications of medium complexity, and three of the least complex applications subject to rule 0-4. There are no ongoing expenses.

14. Cost to the Federal Government

The annual cost of reviewing and processing applications under the Advisers Act for orders from the Commission for exemptive relief amounted to approximately \$737,753 in fiscal year 2022, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.¹⁴

15. Changes in Burden

We estimate no changes in the annual number of responses or annual time burden. Rule 0-4 imposes no time burden, however we are continuing to request one hour for administrative purposes. We estimate that the annual external cost burden will increase by \$12,710 from \$392,500 to \$405,210. Although we expect that the rulemaking amendments would result in a decrease in the annual external cost burden, it would increase due to updated data concerning baseline costs. These changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all information collection burden estimates for this OMB control number.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

¹⁴ 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 \$737,753 in May 2022. The U.S. Bureau of Labor Statistics CPI inflation calculator is *available at* https://www.bls.gov/data/inflation_calculator.htm.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submissions

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.