

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

A. JUSTIFICATION

1. Necessity for the Collection Information

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

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-6(c).

³ 17 CFR 270.0-2.

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 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. Each application subject to rule 0-2 is a one-time request and the rule itself does not impose any ongoing obligations or burdens on the part of an applicant.

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,⁴ 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 0-2 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

⁴ 5 U.S.C. 601.

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 0-2.⁵

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. 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

⁵ For example, in 2019, the Commission adopted rule 6c-11 which codified and expanded the framework the Commission had taken in a number of exemptive orders related to exchange-traded funds by eliminating conditions included within exemptive orders that the Commission no longer believed necessary and removing historical distinctions between certain categories of funds. *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) [84 FR 68550 (Dec. 16, 2019)].

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 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 previously estimated that it receives approximately 129 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. Each application subject to rule 0-2 is a one-time request and the rule itself does not impose any ongoing obligations or burdens on the part of an applicant. The time to prepare an application depends on the complexity and/or novelty of the issues covered by the application.

TABLE 1: RULE 0-2 PRA ESTIMATES

	Number of Responses	Annual hours	Annual internal time cost ¹	Annual external cost burden ¹
2020 approved inventory	129	2,617	\$994,308.29	\$6,904,100
	- 17	- 349	+103,403.71	+3,399,900
Revised estimate	112	2,268 hours²	\$1,097,712³	\$10,304,000

1. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (as adjusted to account for inflation, the "SIFMA Wage Report").
2. The Commission estimates that each application for an exemptive order takes approximately 20.25 hours of in-house attorney time. This estimate is an average for all applications that takes into account that certain applications are relatively less complex, most applications are of moderate complexity, and a small number applications are novel or especially complex (and thus are very time-consuming).
3. The Commission's estimate of the cost of in-house attorney time is based on the following calculation, using the SIFMA Wage Report: 20.25 hours x \$484 per hour x 112 responses = \$1,097,712.
4. In the third quarter of 2016, the Commission estimated the average external cost per application (taking into account the relative complexity of certain applications) was approximately \$76,500 per application. This external cost has been inflated using the PCE Index for Legal Services (134.571 in the first quarter of 2023 compared to 111.930 in the third quarter of 2016), then rounded to the nearest thousand. See U.S. Bureau of Economic Analysis, "Table 2.4.4U. Price Indexes for Personal Consumption Expenditures by Type of Product."

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 \$6,904,100. As shown in Table 1 above, we estimate that the total estimated annual cost burden will change to \$10,304,000.

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 \$10 million in fiscal year 2022, 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 changed to 2,268 hours and the estimated annual cost burden changed to \$10,304,000, as shown in the table below. These changes are due to changes in the number of responses as well as changes in the estimated cost of external legal services associated with rule 0-2.

TABLE 2: CHANGE IN RULE 0-2 PRA ESTIMATES

Annual Number of Responses	
Previously approved:	129
Requested:	112
Change:	- 17 responses
Annual Time Burden (Hours)	
Previously approved:	2,617 hours
Requested:	2,268 hours
Change:	- 349 hours
Annual Cost Burden (\$)	
Previously approved:	\$6,904,100
Requested:	\$10,304,000
Change:	+ \$3,399,900

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.