



## **PAPERWORK REDUCTION ACT SUPPORTING STATEMENT**

for the Extension of  
Rule 3a-8 under the Investment Company Act; Certain Research and Development  
Companies  
OMB Control Number 3235-0574

The U.S. Securities and Exchange Commission (“Commission” or SEC) submits this information collection request (ICR) pursuant to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Section 3501 et seq., with the following justification.

### **1. Necessity of Information Collection**

Adopted in 2003, rule 3a-8 (17 CFR 270.3a-8) under the Investment Company Act of 1940 (the “Act”) (15 U.S.C. 80a), serves as a nonexclusive safe harbor from the Act’s definition of investment company for certain bona fide research and development companies (“R&D companies”). The rule is designed primarily to benefit R&D companies that often raise and invest large amounts of capital to fund their research and product development and may make strategic investments in other R&D companies to develop products jointly. In the absence of rule 3a-8, these activities may cause an R&D company to fall within the Act’s definition of investment company and fail to qualify for an exclusion.<sup>1</sup>

Among other things, rule 3a-8 requires that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents. The board of directors of a company that relies on the safe harbor under rule 3a-8 also must adopt a written policy with respect to the company’s capital preservation investments.<sup>2</sup> The involvement of the board of directors in these ways is designed to ensure that reliance on the rule is consistent with investor protection. The collection of information imposed by the rule is voluntary because rule 3a-8 is an exemptive safe harbor, and therefore, R&D companies may choose whether to rely on it. An R&D company seeking to rely on the safe harbor would need to retain these records only as long as such records must be maintained in accordance with state law.

### **2. Purpose and Use of Information Collection**

The purposes of the information collection requirements in rule 3a-8 are to ensure that: (i) the board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act; and (ii) adequate records are available for Commission review, if necessary.

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<sup>1</sup> See sections 3(a)(1)(A) and 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(A), 80a-3(a)(1)(C)).

<sup>2</sup> The rule defines “capital preservation investment” as an investment that is made to conserve capital and liquidity until the funds are used in the issuer’s primary business or businesses. 17 CFR 270.3a-8(b)(4).

### **3. Use and Consideration of Information Technology**

Rule 3a-8 does not require reporting of any information or the filing of any documents with the Commission. The board of directors of an R&D company seeking to rely on the rule would need to adopt a board resolution and record that resolution contemporaneously in its minute books or comparable documents. Under the Federal securities laws, the Commission does not prescribe how R&D companies keep records of board resolutions or minutes of board meetings. Accordingly, an R&D company could maintain these records electronically unless otherwise prohibited by state law.

### **4. Identifying and Minimizing Duplication**

Rule 3a-8 does not impose any requirements that are duplicated elsewhere in the Federal securities laws, and similar information is not available from other sources.

### **5. Effect on Small Entities**

The Commission staff estimates that approximately 721,792 companies may rely on the rule, but anticipates that only a small percentage of these companies may be considered small entities. The only significant alternative to the rule would be for an R&D company to engage in its own analysis of existing statutory provisions and Commission orders and interpretations to determine the R&D company's status under the Act. The Commission therefore concludes that the rule, although it could affect small entities, would be less burdensome than this alternative and, thus, would minimize any impact upon, or cost to, small businesses. The Commission believes it could not adjust the rule to lessen the burden on small entities of complying with the rule without compromising the protection of investors in those small entities.

### **6. Consequences of Not Conducting Collection and Obstacles to Reducing Burden**

The information collection requirements of rule 3a-8 would apply to an R&D company only if the R&D company relies on the rule. Under the rule, the board of directors of an R&D company relying on the rule would need to adopt and record a resolution that the company is engaged in a non-investment business only once, unless the relevant circumstances change. Absent the required information collections, it would be more difficult to determine that an R&D company does not fall within the definition of investment company under the Act and should not be subject to the regulatory requirements associated with being an investment company.

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

None.

### **8. Public Comment and Consultations Outside the Agency**

The Commission requested public comment on the collection of information requirements in rule 3a-8 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission did not receive public comment during the 60-day notice and comment period.

### **9. Payment or Gift to Respondents**

Not applicable.

## 10. Assurance of Confidentiality and Privacy

The information collection does not collect information about individuals, therefore, a PIA, SORN, and PAS are not required.

## 11. Collection Questions of a Sensitive Nature

Not applicable.

## 12. Estimated Time Burden and its Cost Equivalent

Commission staff estimates that approximately 721,792 R&D companies may take advantage of rule 3a-8.<sup>3</sup> Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),<sup>4</sup> the Commission believes that all the R&D companies that existed prior to the adoption of rule 3a-8 adopted their board resolutions and established written investment guidelines in 2003 when the rule was adopted. We expect that R&D companies formed subsequent to the adoption of rule 3a-8 would adopt the board resolution and investment guidelines simultaneously with their formation documents in the ordinary course of business.<sup>5</sup> Therefore, we estimate that rule 3a-8 does not impose additional burdens.

Although Commission staff estimates that there is no annual paperwork burden associated with the rule's requirements, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

| ICR Estimated Time Burden and its Cost Equivalent |                  |                       |  |                   |                              |                                  |  |
|---|------------------|-----------------------|--|-------------------|------------------------------|----------------------------------|--|
| Information Collections (ICs)                     | Requirement Type | Number of Respondents | Frequency of Response (Number of Responses per Respondent per Time Period) | Time per Response | Equivalent Cost per Response | Total Annual Time Burden (Hours) | Total Annual Cost Burden Equivalent (\$) |
| Rule 3a-8   | Recordkeeping    | 1                     | 1 Response per Respondent per Year   | 1 hour            | \$0                          | 1 hour                           | \$0                                      |
| <b>TOTAL ICs:</b><br>1                            |                  |                       |  |                   | <b>ICR TOTAL:</b>            | <b>1 Hour</b>                    | <b>\$0</b>                               |

<sup>3</sup> See National Science Foundation, National Center for Science and Engineering Statistics, Business Enterprise Research and Development, 2023 Data Tables, Table 10, available at: <https://nces.nsf.gov/surveys/business-enterprise-research-development/2023#data>.

<sup>4</sup> In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and recorded in the ordinary course of business and would not create additional time burdens.

<sup>5</sup> In order for these companies to raise sufficient capital to fund their product development stage, Commission staff believes that they will need to present potential investors with investment guidelines. Investors generally want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

### 13. Estimated Additional Cost Burden

The information collection requirements in rule 3a-8 do not impose any cost burden.

| ICR Estimated Additional Cost Burden     |   |                  |                       |  |
|--|---|------------------|-----------------------|--|
| Additional Information Collections (ICs) | Related Supporting Statement Question 12 IC | Requirement Type | Number of Respondents | Total Annual Additional Cost Burden (\$) |
| Rule 3a-8                                | Rule 3a-8                                   | Recordkeeping    | 1                     | \$0                                      |
| TOTAL ICs: 1                             |   |                  | ICR TOTAL:            | \$0                                      |

### 14. Annual Cost to the Federal Government

The SEC is in the process of revising its methodologies to estimate annualized costs to the Federal government for all its relevant collections of information. The SEC anticipates that future extensions of this collection of information will reflect the revised methodologies.

### 15. Reasons for Changes in Burden Estimates

Rule 3a-8 has a current burden of 1 hour. Commission staff continues to estimate that newly formed R&D companies adopt the required board resolution and investment guideline in the ordinary course of business, and therefore results in an annual burden of 0 hours. We request authorization to maintain the inventory of one burden hour for administrative purposes.

| Reasons for Changes in Burden Estimates |  |                                       |
|---|--|---------------------------------------|
| Information Collections (ICs)           | Area of Change                         | Reason for Change in Burden Estimates |
| Rule 3a-8                               | Annual Number of Responses for this IC | No change                             |
|   | Annual IC Time Burden (Hours)          | No change                             |
|   | Annual IC Cost Burden (Dollars)        | No change                             |

### 16. Plans for Publishing Results

Not applicable.

### 17. Approval to Omit Display of OMB Expiration Date

Not applicable.

## 18. Exceptions to the Certification for Paperwork Reduction Act Submissions

The following exceptions apply to rule 3a-8:

- Small entities (see explanation in Item 5): The rule would reduce burdens for small entities relative to the alternative where, absent the rule, small entities would be required to conduct their own legal analyses under the Investment Company Act. , although it could affect small entities, would be less burdensome than this alternative and, thus, would minimize any impact upon, or cost to, small businesses. The Commission believes it could not adjust the rule to lessen the burden on small entities of complying with the rule without compromising the protection of investors in those small entities.
- Record retention period: Rule 3a-8 does not specify a record retention period. An R&D company seeking to rely on the safe harbor would need to retain the required records only as long as such records must be maintained in accordance with state law.
- Statistical survey methodology: Rule 3a-8 does not employ statistical survey methods.
- Information technology (see explanation in Item 3): Rule 3a-8 does not prescribe how R&D companies keep the required records. Accordingly, state law would determine how such records are maintained. An R&D company could maintain these records electronically unless otherwise prohibited by state law.