



## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-516, OMB Control No. 3235-0574]

### Submission for OMB Review; Comment Request; Extension: Rule 3a-8

Upon Written Request, Copies Available From

Securities and Exchange Commission

Office of FOIA Services

100 F Street NE

Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Title 17 section 270.3a-8 (rule 3a-8 of the Investment Company Act of 1940 (15 U.S.C. 80a) (the “Act”)), serves as a nonexclusive safe harbor from investment company status for certain research and development companies (“R&D companies”).

The rule 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.<sup>1</sup> An R&D company seeking to rely on the safe harbor must retain these records only as long as such records must be maintained in accordance with state law.

Rule 3a-8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that

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<sup>1</sup> Rule 3a-8(a)(6) (17 CFR 270.3a-8(6)).

relies on the safe harbor under rule 3a-8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a-8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. 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. Rule 3a-8 would not require the reporting of any information or the filing of any documents with the Commission.

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

Commission staff estimates that approximately 537,619 R&D companies may take advantage of rule 3a-8.<sup>2</sup> Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),<sup>3</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

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<sup>2</sup> See National Science Foundation, National Center for Science and Engineering Statistics, Business Enterprise Research and Development, 2020 Data Tables, Table 10, *available at*: <https://nces.nsf.gov/pubs/nsf23314>.

<sup>3</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.

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>4</sup>

Therefore, we estimate that rule 3a-8 does not impose additional burdens.

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 control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to

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<sup>4</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.

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Director/Chief Information Officer, Securities and Exchange Commission, c/o John  
Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to:

PRA\_Mailbox@sec.gov.

Dated: August 8, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

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