



## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-472, OMB Control No. 3235-0531]

### Proposed Collection; Comment Request; Extension: Rule 0-1

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”) plans to submit to the Office of Management and Budget a request for extension of the previous approved collection of information discussed below.

The Investment Company Act of 1940 (the “Act”)<sup>1</sup> establishes a comprehensive framework for regulating the organization and operation of investment companies (“funds”). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.<sup>2</sup> Rule 0-1 (17 CFR 270.0-1), as amended, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission’s rules and regulations. Finally, rule 0-1 defines terms that serve as conditions to the availability of certain of the Commission’s exemptive rules. More specifically, the term “independent legal counsel,” as

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<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> For example, fund directors must approve investment advisory and distribution contracts. *See* 15 U.S.C. 80a-15(a), (b), and (c).

defined in rule 0-1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules (“exemptive rules”) under the Act.<sup>3</sup>

If the board’s counsel has represented the fund’s investment adviser, principal underwriter, administrator (collectively, “management organizations”) or their “control persons”<sup>4</sup> during the past two years, rule 0-1 requires that the board's independent directors make a determination about the adequacy of the counsel’s independence. A majority of the board’s independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel’s prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel’s professional judgment and legal representation. Rule 0-1 also requires that a record for the basis of this determination is made in the minutes of the directors’ meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of “independent legal counsel” under rule 0-1. We assume that approximately 2,909 funds rely on at least one of the exemptive rules annually.<sup>5</sup> We further assume that the

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<sup>3</sup> The relevant exemptive rules are: rule 10f-3 (17 CFR 270.10f-3), rule 12b-1 (17 CFR 270.12b-1), rule 15a-4(b)(2) (17 CFR 270.15a-4(b)(2)), rule 17a-7 (17 CFR 270.17a-7), rule 17a-8 (17 CFR 270.17a-8), rule 17d-1(d)(7) (17 CFR 270.17d-1(d)(7)), rule 17e-1(c) (17 CFR 270.17e-1(c)), rule 17g-1 (17 CFR 270.17g-1), rule 18f-3 (17 CFR 270.18f-3), and rule 23c-3 (17 CFR 270.23c-3).

<sup>4</sup> A “control person” is any person – other than a fund – directly or indirectly controlling, controlled by, or under common control, with any of the fund’s management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

<sup>5</sup> Based on statistics compiled by Commission staff, we estimate that there are approximately 3,232 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (2,909) actually rely on at least one exemptive rules annually.

independent directors of approximately one-third (970) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.<sup>6</sup> We estimate that each of these 970 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 727.5 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately \$194,485. To calculate this total annual cost, the Commission staff assumed that approximately two-thirds of the total annual hour burden (485 hours) would be incurred by a compliance manager with an average hourly wage rate of \$360 per hour,<sup>7</sup> and one-third of the annual hour burden (242.5 hours) would be incurred by compliance clerk with an average hourly wage rate of \$82 per hour.<sup>8</sup>

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of

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<sup>6</sup> We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

<sup>7</sup> The estimated hourly wages used in this PRA analysis were derived from the Securities Industry and Financial Markets Association's Reports on Management and Professional Earnings in the Securities Industry (2013) (modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead) (adjusted for inflation), and Office Salaries in the Securities Industry (2013) (modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead) (adjusted for inflation).

<sup>8</sup>  $(485 \times \$360/\text{hour}) + (242.5 \times \$82/\text{hour}) = \$194,485.$

information technology. Consideration will be given to comments and suggestions submitted by  
**[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE Washington, DC 20549 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov) .

Dated: October 6, 2023.

**J. Lynn Taylor,**

*Assistant Secretary.*

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