



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-819, OMB Control No. 3235-0780]

Proposed Collection; Comment Request; Extension: Rule 0-5

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 (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Rule 0-5 (17 CFR 270.0-5) under the Investment Company Act (the "Act") (15 U.S.C. 80a *et seq.*) entitled "Procedure with Respect to Applications and Other Matters," sets forth procedure for applications seeking orders for exemptions or other relief under the Investment Company Act. Rule 0-5(e) requires applicants seeking expedited review to include certain information with the application. Rule 0-5(e)(1) requires that the cover page of the application include a notation prominently stating "EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0-5(d)." Rule 0-5(e)(2) requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of two precedent applications identified as substantially identical. Rule 0-5(e)(3) requires an accompanying cover letter, signed, on behalf of the applicant, by the person executing the application (i) identifying two substantially identical applications and explaining why the applicant chose those particular applications, and if more recent applications of the same type have been approved, why the applications chosen, rather

than the more recent applications, are appropriate; and (ii) certifying that that the applicant believes the application meets the requirements of rule 0-5(d) and that the marked copies required by rule 0-5(e)(2) are complete and accurate.

Rule 0-5(g) provides that, if an applicant has not responded in writing to a request for clarification or modification of an application filed under standard review within 120 days after the request, the application will be deemed withdrawn. As an oral response would not stop an application from being deemed withdrawn, rule 0-5(g), requires applicants to respond “in writing” and therefore create an additional cost within the meaning of the PRA.

The information collected under rule 0-5(g) and (e) is intended to provide an expedited review procedure for certain applications and establish an internal timeframe for review of applications outside of the expedited procedure. The rule is meant to provide relief as efficiently and timely as possible, while also ensuring that applications continue to be carefully analyzed consistent with the relevant statutory standards.

Applicants for orders under the Act can include investment companies and affiliated persons of investment companies. Applicants file applications as they deem necessary. The Commission receives approximately 116 applications per year under the Act, and of the 116 applications, we estimate to receive approximately 32 applications seeking expedited review under the Act. Although each application is typically submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single applicant for purposes of this analysis. Each application subject to rules 0-5(e) and 0-5(g) does not impose any ongoing obligations or burdens on the part of an applicant.

Much of the work of preparing an application is performed by outside counsel. Based on conversations with applicants and Staff experience, approximately 20 percent of applications are prepared by in-house counsel.

The mandatory requirements under rule 0-5(e) increase the estimated hour or cost burden for applicants utilizing in-house counsel by 7 hours¹ or \$3,388² per application. Therefore, the mandatory requirements under rule 0-5(e) increase the total estimated annual hour burden by approximately 50 hours utilizing in-house counsel.³ The total estimated annual cost burden for utilizing in-house counsel is \$24,200.⁴

We estimate to receive approximately 84 applications⁵ per year seeking standard review under the Act and of the 84 applications, we estimate that in approximately 10 percent of those, the applicants respond “in writing” to avoid the application being deemed withdrawn pursuant to rule 0-5(g). We believe the “in writing” requirement under rule 0-5(g) increases the burden for applicants utilizing in-house counsel by 2 hours or \$968 per application.⁶ Therefore, the “in writing” requirement under rule 0-5(g) increases the total estimated annual hour burden by

¹ This estimate is based on the following calculation: 5 hours (estimated hours per application to prepare the marked copies) + 2 hour (estimated hours per application to explain, notate, and certify) = 7 hours.

² This estimate is based on the following calculation: 5 (estimated hours per application to prepare the marked copies) x \$484 (hourly rate for an in-house counsel) = \$2,420; 2 (estimated hours per application to explain, notate, and certify) x \$484 (hourly rate for an in-house counsel) = \$968; \$2,420 (estimated cost per application to prepare the marked copies) + \$968 (estimated cost per application to explain, notate, and certify) = \$3,388; the hourly wages data is from the Securities Industry Financial Markets Association’s Management & Professional Earnings in the Securities Industry 2013, modified by Commission Staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) to account for bonuses, firm size, employee benefits, and overhead, suggests that the cost for in-house counsel is \$484 per hour.

³ This estimate is based on the following calculations: [5 (estimated hours per application to prepare the marked copies) + 2 (estimated hours per application to explain, notate, and certify)] x 32 (estimated number of applications under expedited review) x 0.20 (approximate percentage of applications prepared by in-house counsel) = 44.8 (rounded up to 50).

⁴ This estimate is based on the following calculation: 50 (estimated total hours utilizing in-house counsel) x \$484 (hourly rate for an in-house counsel) = \$24,200.

⁵ This estimate is based on the following calculation: 116 (estimated number of all applications) – 32 (estimated number of applications under expedited review) = 84.

⁶ This estimate is based on the following calculation: 2 (estimated hours to prepare “in writing” response) x \$484 (hourly rate for an in-house counsel) = \$968.

approximately 3.36 hours utilizing in-house counsel.⁷ The total estimated annual cost burden utilizing in-house counsel is \$1,626.24.⁸

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 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, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: December 5, 2023.

Sherry R. Haywood,

Assistant Secretary.

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⁷ This estimate is based on the following calculations: 2 (estimated hours to prepare “in writing” response) x 84 (estimated number of applications under standard review) x 0.10 (approximate percentage of application required to respond “in writing”) x 0.20 (approximate percentage of applications prepared by in-house counsel) = 3.36.

⁸ This estimate is based on the following calculation: 3.36 (estimated total hours utilizing in-house counsel) x \$484 (hourly rate for an in-house counsel) = \$1,626.24.