extending upward from 700 feet above the surface at Torrington Municipal Airport, Torrington, WY. In addition to the airspace within 7.7 miles of the airport, additional airspace accommodates two new RNAV approaches. A rectangular segment east of the airport 7 miles each side of the 109° bearing extending 27 miles from the airport, and an area northwest of the airport 2 miles each side of the 295° bearing extending from the 7.7-mile radius to 11 miles northwest of the airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order (E.O.) 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WY E5 Torrington, WY [Amend]

Torrington Municipal Airport, WY
(Lat. 42°03′52″ N, long. 104°09′10″ W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Torrington Municipal Airport, and that airspace 2 miles each side of the 295° bearing extending from the 7.7-mile radius to 11 miles northwest of the airport, and that airspace 7 miles each side of the 109° bearing extending from the 7.7-mile radius to 27 miles east from the airport.

Issued in Seattle, Washington, on September 8, 2020.

Byron Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–20233 Filed 9–14–20; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 202 and 270

[Release No. IC–33921; File No. S7–19–19]

RIN 3235–AM51

Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting amendments to its rules under the Investment Company Act of 1940 to establish an expedited review procedure for applications that are substantially identical to recent precedent as well as a rule to establish an internal timeframe for review of applications outside of such expedited procedure. In addition, the Commission is adopting an amendment to its rules under the Investment Company Act of 1940 to deem an application outside of expedited review withdrawn when the applicant does not respond in writing to comments within 120 days.

DATES: *Effective date:* June 14, 2021.

FOR FURTHER INFORMATION CONTACT: Steven Amchan and Hae-Sung Lee, Senior Counsels; Daniele Marchesani, Assistant Chief Counsel; Chief Counsel's Office, at (202) 551–6825; or Keith Carpenter, Senior Special Counsel; Disclosure Review and Accounting Office, at (202) 551–6921, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting an amendment to 17 CFR 270.05 (rule 0–5) under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*], an amendment to 17 CFR 200.30–5 (rule 30–5) and 17 CFR 202.13. The Commission is also adopting related amendments to rule 30–5 of its Rules of Organization and Program Management governing delegation of authority to the Director of Division of Investment Management.

Table of Contents

I. Introduction and Background

The applications process under the Investment Company Act of 1940 (''Act'') has been a significant and valuable tool in the evolution of the investment management industry, and the rules we are adopting are intended to increase its efficiency and transparency. The Commission is adopting amendments to rule 0–5 under the Act to establish an expedited review procedure for applications that are substantially identical to recent precedent as well as a rule to establish an internal timeframe for review of applications outside of such expedited procedure. The Commission is also adopting amendments to rule 0–5 to deem an application outside of expedited review withdrawn when the applicant does not respond in writing to comments within 120 days.[1]

On October 18, 2019, we proposed these rule amendments and new rule.[2] We also announced our intention to begin disseminating publicly staff of the Division of Investment Management (''Staff'' or ''Division'') comments on applications as well as responses to those comments. As discussed in greater detail below, commenters [3] generally supported the rules to make the applications process more efficient and transparent.[4] Some commenters were supportive of our proposal without suggesting modifications.[5] Other commenters recommended modifications and clarifications to certain aspects of it. For example, several commenters suggested broadening the eligibility requirements to use the expedited review process.[6] Additionally, a number of commenters recommended making the proposed internal timeframe for standard applications shorter.[7] Finally, while a few commenters supported our proposal to begin publicly releasing Staff comments and applicants' responses,[8] several did not and expressed concerns.[9]

After consideration of the comments we received, we are adopting the rule amendments and rule largely as proposed, with modifications to address comments.[10] Additionally, at the present time Staff comments and applicants' responses will not be publicly disseminated.

A. Overview of Applications for Relief Under the Act

In 1940, Congress passed the Act in response to numerous abuses that existed in the investment company industry prior to that time.[11] As a result, the Act imposes significant substantive restrictions on the operation of investment companies that it regulates (''funds''). Congress, however, also recognized the need for flexibility to address unforeseen or changed circumstances, consistent with the protection of investors, in the administration of the Act.[12]

The Act, therefore, contains provisions that empower the Commission to issue orders granting exemptions from provisions of the Act, authorizing transactions, or providing other relief.[13] Most significantly, section 6(c) gives the Commission the broad power to exempt conditionally or unconditionally any person, security, or transaction from any provisions of the Act or any rule thereunder, provided that the 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].'' [14] The Commission regularly receives applications seeking orders for exemptions or other relief under the Act.[15] If the request meets the applicable standards, the Commission publishes a notice of the application in the **Federal Register** and on its public website, stating its intent to grant the requested relief.[16] The notice gives interested persons an opportunity to request a hearing on the application. If the Commission does not receive a hearing request during the notice

[1] Unless otherwise specified, references to days herein are to calendar days.

[2] *See* Amendments to Procedures With Respect to Applications under the Investment Company Act of 1940, Investment Company Act Release No. 33658 (Oct. 18, 2019) [84 FR 58075 (Oct. 30, 2019)] (''Proposing Release'').

[3] The comment letters on the Proposing Release (File No. S7–19–19) are available at *https://www.sec.gov/comments/s7-19-19/s71919.htm*.

[4] *See* Comment Letter of the Investment Company Institute (Nov. 29, 2019) (''ICI Comment Letter''); Comment Letter of the Investment Adviser Association (Nov. 27, 2019) (the Investment Adviser Association stated that it supports the comments and recommendations put forth in the ICI Comment Letter); Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association (Nov. 27, 2019) (''SIFMA AMG Comment Letter''); Comment Letter of Fidelity Investments (Nov. 29, 2019) (''Fidelity Comment Letter''); Comment Letter of Stradley Ronon Stevens & Young, LLP (Dec. 4, 2019) (''Stradley Comment Letter''); Comment Letter of the Small Business Investor Alliance (Nov. 29, 2019) (''SBIA Comment Letter''); Comment Letter of Kathleen Crowley (Nov. 6, 2019) (''Kathleen Crowley Comment Letter''). One commenter questioned why the changes we are adopting require a rule. *See* Comment Letter of Diane Smith (Oct. 20, 2019) (''Diane Smith Comment Letter''). The commenter asked why the Staff cannot just quickly notice applications that are substantially identical to precedent. *Id.* We are enacting these procedures as rules because we believe that applicants will benefit from the certainty and transparency of these rules.

[5] *See* SBIA Comment Letter; Kathleen Crowley Comment Letter.

[6] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Fidelity Comment Letter; Comment Letter of the American Investment Council (Nov. 26, 2019) (''AIC Comment Letter''); Stradley Comment Letter.

[7] *See id.*

[8] *See* Diane Smith Comment Letter; Comment Letter of the Capital Group Companies (Nov. 26, 2019) (''Capital Group Comment Letter''); Comment Letter of Abigail Najera (Nov. 14, 2019) (''Abigail Najera Comment Letter''); Comment Letter of Ed Snoke (Dec. 21, 2019) (''Ed Snoke Comment Letter'').

[9] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Fidelity Comment Letter; Stradley Comment Letter.

[10] A few commenters had suggestions for improving the applications notice process. *See* Diane Smith Comment Letter; Ed Snoke Comment Letter. While changing the application notice process is beyond the scope of this rulemaking, the Staff will consider the suggestions as they continue to consider process improvements and any additional recommendations to the Commission.

[11] *See generally* Investment Trusts and Investment Companies, Report of the Securities and Exchange Commission, pt. 3, ch. 7, H.R. Doc. No. 136, 77th Cong., 1st Sess. (1941); 15 U.S.C. 80a–1.

[12] *See e.g.,* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 872 (1940) (hereinafter 1940 Senate Hearings) (Commissioner Healy stated that ''it seemed possible and even quite probable that there might be companies—which none of us have been able to think of—that ought to be exempted.''); *id.* at 197 (David Schenker, Chief Counsel of the Investment Trust Study, stated that ''the difficulty of making provision for regulating an industry which has so many variants and so many different types of activities . . . is precisely [the reason that section 6(c)] is inserted.'').

[13] As the orders are subject to the terms and conditions set forth in the applications requesting relief, references in this release to ''relief'' or ''orders'' include the terms and conditions described in the related application.

[14] 15 U.S.C. 80a–6(c). Other sections of the Act provide the Commission with additional or specific exemptive authority. *See, e.g.,* section 3(b)(2) (Commission may find that an issuer is ''primarily engaged'' in a non-investment company business even though the issuer may technically meet the definition of investment company); section 12(d)(1)(J) (Commission may exempt any person, security, or transaction, or any class or classes of transactions, from section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors); and section 17(b) (Commission may exempt proposed transactions from the Act's affiliated transaction prohibitions) (codified at 15 U.S.C. 80a–3(b)(2), 15 U.S.C. 80a–(12)(d)(1)(J), and 15 U.S.C. 80a–17(b)).

[15] In fiscal year 2019, approximately 112 initial applications were filed under the Act on EDGAR Form Type 40–APP.

[16] Notices of the Commission's intent to deny the requested relief, and the related orders, are rare because applicants typically withdraw or abandon their application in anticipation of such actions.

period, and does not otherwise order a hearing on an application, subsequent to the expiration of the notice period, the Commission generally issues an order granting the requested relief.[17]

The Staff reviews the applications that the Commission receives under the Act.[18] During the review process, the Division may issue comments to the applicant, asking for clarification of, or modification to, an application to determine whether, or ensure that, the relief meets the Act's standards.[19] In addition, the Commission has granted the Director of the Division of Investment Management (''Director'') delegated authority to issue notices of applications and orders generally where the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.[20] The vast majority of notices of applications and orders are issued by the Commission via the Staff under delegated authority. For those applications for which the Director does not have delegated authority, after the Division's review is completed, the Division presents them to the Commission. The Director does not have delegated authority to deny applications.

The applications process under the Act has been a significant and valuable tool in the evolution of the investment management industry, and sometimes is the origin of new rules under the Act.[21] Some applications, for example, have requested relief from provisions of the Act to permit funds to operate in a more efficient and less costly manner.[22] Applicants have also sought relief to implement innovative features or create new types of funds that do not fit within the regulatory confines of the Act.[23] For example, over the course of 27 years, exchange-traded funds (''ETFs'') originated and developed through the applications process.[24] Because the drafters of the Act in 1940 did not contemplate the ETF structure, ETFs need exemptions from certain provisions of the Act to operate.[25] ETFs registered under the Act now have approximately $3.32 trillion in total net assets and account for approximately 16 percent of total net assets of registered investment companies.[26]

B. Efforts To Improve the Application Process

As discussed in the previous section, granting appropriate exemptions from the Act can provide important economic benefits to funds and their shareholders, foster financial innovation, and increase the diversity of opportunities for investors. We thus recognize the importance of considering and, where appropriate, granting relief as efficiently and quickly as possible. However, in light of our statutory mission of investor protection and the substantive concerns underlying the Act, we also recognize the critical importance of analyzing applications carefully to determine whether the relief requested, together with any terms and conditions of the relief, meets the relevant statutory standards.[27]

Over time, some applicants have expressed concern regarding the length of time required to obtain an order on both routine and novel applications. In 1990, the Commission requested comments on, among other things, whether it should adopt different procedures for applications.[28] In response, commenters argued that lengthy review procedures delay the commencement of transactions, prevent applicants from responding quickly to changing market conditions, and slow the entry of new products to the market, all to the detriment of investors.[29] As a result, in 1993, the Commission proposed amendments to rule 0–5 under the Act to establish an expedited review procedure for certain routine applications.[30] The Commission, however, did not adopt these proposed amendments.

In subsequent years, initiatives aimed at improving the application process

[17] 15 U.S.C. 80a–39; 17 CFR 270.0–5. In fiscal year 2019, the Commission issued 97 orders for applications under the Act.

[18] Applications under the Act are filed on EDGAR. *See* Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E, Investment Company Act Release No. 28476 (Oct. 29, 2008). The Commission has stated that the Staff will not, except in the most extraordinary situations, review draft applications. *See* Commission Policy and Guidelines for Filing of Applications for Exemption, Investment Company Act Release No. 14492 (Apr. 30, 1985) (specifying certain procedures that applicants should follow in order to facilitate the review of applications) (''1985 Release''). Consistent with the Commission's statement, the Staff currently only reviews draft applications in very limited circumstances. One commenter stated that the Staff has not provided a clear explanation of how it evaluates whether an application meets this high standard, and requested that we more clearly define it, and establish a formal process for applicants to seek review of draft applications. *See* AIC Comment Letter. The Commission's longstanding policies regarding draft applications from the 1985 Release are well established and we do not believe they require further elaboration. Applicants seeking clarifications as to their particular facts and circumstances are encouraged to reach out to the Staff.

[19] In the past, the Staff placed applications on inactive status when applicants did not respond to comments within 60 days. Such inactive status was for internal tracking purposes only and had no effects on the application process. In the expedited review process we are adopting, 17 CFR 270.0–5(f)(2)(iii) (rule 0–5(f)(2)(iii)) deems expedited applications withdrawn without prejudice if the applicant has not filed an amendment responsive to a Staff request for modification within 30 days. For non-expedited applications, new 17 CFR 270.0–5(g) (rule 0–5(g)) provides that if an applicant has not responded in writing to a request for clarification or modification of an application within 120 days, such application will be deemed withdrawn without prejudice.

[20] Title 17 CFR 200.30–5(a)(1) generally delegates the power to issue notices with respect to applications under the Act where the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter. Title 17 CFR 200.30–5(a)(2) generally delegates the power to authorize the issuance of orders where (1) a notice has been issued and no request for a hearing has been received from any interested person within the period specified in the notice, (2) the Director believes that the matter presents no significant issues that have not been previously settled by the Commission, and (3) it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

[21] *See infra* footnote 35.

[22] *See, e.g.,* Franklin Alternative Strategies Funds, et al., Investment Company Act Release Nos. 33095 (May 10, 2018) (Notice of Application) and 33117 (June 5, 2018) (Order) (permitting applicants to operate a joint lending and borrowing facility).

[23] For example, money market funds need exemptive relief from section 2(a)(41) (which requires registered investment companies to value their securities based on market values, if available, or if not, as determined in good faith by the board of directors) in order to operate. In a series of orders beginning in the 1970s, the Commission permitted money market funds to use alternative valuation methods, such as amortized cost or penny rounding. The Commission later adopted 17 CFR 270.2a–7 (rule 2a–7 under the Act) to allow money market funds to operate without individual exemptive orders.

[24] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019).

[25] In 2019, the Commission adopted 17 CFR 270.6c–11 (rule 6c–11) providing relief to most ETFs under the Act. *See id.*

[26] *See id.* at 5.

[27] *See* 15 U.S.C. 80a–6(c).

[28] Request for Comments on Reform of the Regulation of Investment Companies, Investment Company Act Release No. 17534 (June 15, 1990), 55 FR 25322 (the ''Study Release'').

[29] *See, e.g.,* Letter from the Subcomm. on Investment Companies and Investment Advisers of the Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association, to Jonathan G. Katz, Secretary, SEC, 7–9 (Oct. 18, 1990), File No. S7–11–90.

[30] *See* Expedited Procedure for Exemptive Orders and Expanded Delegated Authority, Investment Company Act Release No. 19362 (Mar. 26, 1993). The proposal sought to implement the Staff's recommendations from the *Protecting Investors* report by proposing to amend rule 0–5 under the Act to establish an expedited review procedure for certain routine applications. *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation, Procedures for Exemptive Orders, 503–522 (1992) (considering comments received in response to the Study Release).

have continued. For example, in 2008, the Staff implemented an internal performance target of providing initial comments on at least 80 percent of applications within 120 days after their receipt.[31] We believe this performance measure has helped make the application process more efficient. In 2008, the first year with this performance target, the Division provided initial comments within 120 days on 81 percent of applications.[32] By 2010, the Division met this target on 100 percent of applications, and has not dropped below 99 percent any year since.[33] For filings made on or after June 1, 2019, the Division implemented a new internal target of providing comments on both initial applications and amendments within 90 days.[34] Notwithstanding the recent improvements, we have continued to consider ways to improve the applications process as we recognize the importance of completing the review of an application in an appropriate and timely manner. The rule changes we are adopting are intended to improve the efficiency and speed of the application process while preserving the ability to assess the appropriateness of the requested relief. In addition, the Commission has made it a priority to propose and adopt rules to replace lines of routine applications.[35] These rules benefit the application process by making the corresponding applications no longer necessary, which, in turn, allows the Staff to devote additional resources to other, more novel types of applications that can promote further industry innovation and expand investment choices for investors.

C. Factors Affecting the Application Process

The amount of time necessary for the Staff to review an application depends in large part on the nature of the application. The Staff generally characterizes applications as falling into one of two general categories: (1) Applications that seek novel, largely unprecedented relief or relief for which some Commission precedent exists but that raises additional questions of fact, law, or policy; and (2) applications that seek relief substantively identical to relief that the Commission has recently granted (''routine applications'').

Applications in the first category may involve financial innovations or transactions on the forefront of the investment management industry. In those instances, substantial time and resources are needed to analyze thoroughly the legal and policy issues raised, and the recommendations the Staff must make to the Commission often include significant policy considerations. As part of this process, the Staff generally works with the applicant to refine the proposal and to develop appropriate terms and conditions for the relief that address the applicable standards under the Act. This process can be time consuming.

The Staff generally should be able to review routine applications much more quickly than applications in the first category because the Staff has already performed the overall legal and policy analysis underlying the requested relief. Sometimes, however, routine applications for which there is clear precedent nonetheless contain significantly different versions of the terms or representations compared to the relevant precedent. These applications require extra time to review because the Staff must analyze the changes to determine whether they alter the scope or nature of the requested relief. On more rare occasions, the Staff may re-evaluate the appropriateness of relief previously granted or the terms and conditions associated with the relief, or consider whether the relief can appropriately be granted to a specific applicant.[36]

For all applications, the Commission must consider the applicants' desire to obtain prompt relief while ensuring it has sufficient time to meet its overarching responsibility to consider whether an application meets the standard for the requested relief.

II. Discussion of Commission Action

The rule amendments and rule we are adopting are intended to make the application process more efficient and effective in furthering the purposes of the Act.[37] They are also intended to provide additional certainty and transparency in the application process. Specifically, we are adopting an expedited review process for routine applications, an informal internal procedure for applications that would not qualify for the expedited process, and a rule to deem an application withdrawn when an applicant does not respond in writing to Staff comments within 120 days.

A. Expedited Review Procedure

In order to expedite the review of routine applications, the Commission is adopting amendments to rule 0–5 under the Act, which sets forth the procedure for applications under the Act. These amendments establish an expedited review procedure for applications that are substantially identical to recent precedent. We believe that the approach we are adopting balances applicants' desire for a prompt decision on their application with the Commission's need

[31] Unlike the 1993 proposal to amend rule 0–5 under the Act, this performance target was an internal measure and did not involve the amendment of any rule. *See* U.S. Securities and Exchange Commission, 2008 Performance and Accountability Report, at 40, *available at https://www.sec.gov/about/secpar/secpar2008.pdf. See also* Remarks Before the ICI 2007 Securities Law Developments Conference by Andrew J. Donohue, Director, Division of Investment Management (Dec. 6, 2007), *available at https://www.sec.gov/news/speech/2007/spch120607ajd.htm.* In 2006, the Commission's Inspector General found that the application process was not always timely and provided recommendations for improving the process. *See* SEC Inspector General Report, IM Exemptive Application Processing (Audit No. 408), Sept. 29, 2006.

[32] *See* U.S. Securities and Exchange Commission 2008 Performance and Accountability Report, at 40.

[33] *See* Fiscal Year 2019, Congressional Budget Justification Annual Performance Plan, Fiscal Year 2017, Annual Performance Report, at 99 *available at https://www.sec.gov/files/secfy19congbudgjust.pdf.* In addition to the Division's performance target for comments on initial filings, the Staff also began tracking and seeking the same target for comments on amendments.

[34] In fiscal year 2019, after the implementation of the new internal target, the Division provided comments within 90 days on 100% of applications.

[35] *See, e.g.,* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019); Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) (proposed rule). Earlier examples of rules replacing lines of routine applications include, among others, 17 CFR 270.3a–7 (rule 3a–7) excluding certain structured financings from the definition of ''investment company'' (Exclusion from the Definition of Investment Company for Structured Financings, Investment Company Act Release No. 19105 (Nov. 19, 1992) [57 FR 56248 (Nov. 27, 1992)]); amending 17 CFR 270.15a–4 (rule 15a–4) to address changes in control and acquisitions of investment advisers (Temporary Exemption for Certain Investment Advisers, Investment Company Act Release No. 24177 (Nov. 29, 1999) [64 FR 68019 (Dec. 6, 1999)]); and 17 CFR 270.17a–8 (rule 17a–8) addressing mergers of affiliated investment companies (Investment Company Mergers, Investment Company Act Release No. 25666 (July 18, 2002) [67 FR 48511 (July 24, 2002)]). *See also supra* footnote 23 and SEC Inspector General Report IM Exemptive Application Processing (Audit No. 408), Sept. 29, 2006, at 4.

[36] Several additional factors may affect the timing of the review including, for example, applicants' responsiveness to Staff comments, the number of pending applications, and market or other developments that affect the applicants' business plans.

[37] Our actions do not concern applications under the Investment Advisers Act of 1940 (''Advisers Act''). The Commission receives only a few applications under the Advisers Act each year, and these applications are filed on paper rather than electronically via the EDGAR system. *See www.sec.gov/rules/iareleases.shtml.* These applications are generally fact intensive, so they are less likely to qualify for an expedited review process like the one we are adopting here. *See, e.g.,* The Jeffrey Company, Investment Advisers Act Release Nos. 4659 (Mar. 7, 2017) (Notice of Application) and 4681 (Apr. 4, 2017) (Order) (family office application). *Cf. infra* footnote 67 and accompanying text.

for adequate time to consider requests for relief.

We believe that the new procedure will encourage applicants for expedited review to submit applications substantially identical to precedent, which will help facilitate Staff review. Accordingly, we should be able to grant relief that meets the applicable standards more quickly, and, in turn, devote additional resources to the review of more novel requests.[38] A more efficient application process will allow applicants to realize the benefits of relief more quickly than otherwise would be the case.[39] Further, we believe that the expedited review procedure will make the applications process less expensive for applicants, because we anticipate that it will reduce the number of Staff comments that would require a response and enable applicants to have more certainty regarding the timing of application processing. Generally, we believe fund shareholders will share in these benefits.

1. Eligibility for Expedited Review

Title 17 CFR 270.0–5(d)(1) (rule 0–5(d)(1)) provides that an applicant may request expedited review if the application is substantially identical to two other applications for which an order granting the requested relief has been issued within three years of the date of the application's initial filing.

''Substantially Identical'' Standard

Like the proposal, 17 CFR 270.0–5(d)(2) (rule 0–5(d)(2)) defines ''substantially identical'' applications as those requesting relief from the same sections of the Act and 17 CFR part 270, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested.[40] We intend for applicants only to use the expedited procedure for routine applications that are substantially identical to precedent and seek the same relief that others have already received, so that additional consideration generally is unnecessary. The ''substantially identical'' requirement will help to ensure that applicants use the procedure only when they do not need to modify the terms and conditions of the precedent applications and are not raising new issues for the Commission to consider.[41] In addition, the requirement will help to ensure that applicants submit applications that include language that is substantially identical to the language of the precedent applications, which will facilitate Staff review.

Two commenters generally supported the proposed ''substantially identical'' standard to qualify for expedited review.[42] A number of other commenters, instead, suggested broadening this standard, as well as clarifying certain aspects of it.[43]

Commenters suggested several different modifications to our proposed ''substantially identical'' standard. A few commenters suggested that the standard be changed so that applications would need to be ''substantially identical in all applicable respects'' to precedent.[44] One of these commenters suggested that the Commission could require each applicant to explain in its expedited application why particular conditions in precedent are irrelevant.[45] Another commenter recommended that the expedited application's terms and conditions be substantially identical and differ only with respect to factual differences that are not material to the relief requested.[46] An additional commenter suggested that ''substantially identical'' be replaced with objective criteria, but did not provide specific suggestions, or that ''substantially identical'' be defined as differences ''not relevant in any material respects.'' [47]

We are adopting the ''substantially identical'' standard largely as proposed. With the expedited process, we are seeking to create a new process that is both faster and more certain in its timing than the current process while maintaining sufficient time for the Staff to evaluate applications that may raise novel issues. The ''substantially identical standard'' accomplishes that because it makes the expedited procedure only available for applications that closely track precedent. In most cases under this standard, the Staff should be able to issue a notice within 45 days without issuing any comments to the applicant first.[48] Modifying the standard to permit more extensive differences from precedent applications would require the Staff to inquire about and consider the nature of these differences, which would frustrate the objective of creating a quick review process with increased certainty. Additionally, permitting more extensive differences from precedent would likely lead the Staff to issue more comments in the expedited process and/or transfer applications to the standard process, which could significantly impair our ability to achieve the objectives of the expedited process.

For the same reason, we are not, as some commenters suggested, modifying the rule to allow for ''mix and match'' precedent applications, *i.e.,* applications that combine portions or sections of different prior applications.[49] Applications that mix and match multiple precedents will not meet the ''substantially identical'' standard in the rule.[50] Different lines of applications often have sections that are interconnected with each other in particular ways. In the Staff's experience, the reviews of applications combining different lines of precedent require analysis of whether all the relevant terms and conditions have been carried forward appropriately and work together in a manner consistent with each of the relevant precedents. Such reviews have resulted in a significant number of comments, rendering such applications inconsistent with the approach to, and purpose underlying, the expedited process.

Several commenters requested clarifications relating to the ''substantially identical'' standard. One commenter asked the Commission to clarify the use of the word ''terms'' in the requirement that an expedited application must contain ''identical terms and conditions'' compared to precedent.[51] Reference to the ''terms'' of an application in rule 0–5(d)(2) means the representations in an application that are material to the requested relief. Terms are separate and apart from any

[38] The Staff will issue notices under delegated authority for applications reviewed under the expedited procedure.

[39] *See infra,* discussion in Section III.C.1.

[40] Factual differences not material to the relief requested might include the applicants' identities, the state of legal organization of a fund, and the constitution of the fund's board of directors.

[41] Even small changes to the terms and conditions of an application, compared to a precedent application, may either raise a novel issue or require a significant amount of time for the Staff to consider whether a novel issue is raised. *See supra* Section I.C.

[42] *See* Capital Group Comment Letter; Abigail Najera Comment Letter.

[43] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Fidelity Comment Letter; AIC Comment Letter.

[44] *See* ICI Comment Letter (''We also request that the Commission clarify that an application for expedited review may contain conditions that are substantially identical in all applicable respects with those set forth in prior precedent.''); Fidelity Comment Letter (suggesting that ''in place of the 'substantially identical' standard, an application for expedited review must contain terms and conditions that are substantially identical to prior precedent 'in all applicable respects' '').

[45] *See* ICI Comment Letter.

[46] *See* AIC Comment Letter.

[47] *See* SIFMA AMG Comment Letter.

[48] *See supra,* discussion in Section II.A about reducing the number of Staff comments.

[49] *See* ICI Comment Letter; Fidelity Comment Letter.

[50] *See* Proposing Release, *supra* footnote 2, at n. 29.

[51] *See* ICI Comment Letter.

express conditions included in the application.

The same commenter also asked the Commission to identify in detail any information in an application other than the requested relief and the registrant-provided conditions that must be substantially identical to prior precedent to meet the ''substantially identical'' requirement.[52] Based on the Staff's experience, applications that involve the same types of entities, request the same relief, and are subject to the same terms and conditions as precedent, would usually be ''substantially identical'' notwithstanding minor differences, such as different names and places of legal organization.[53] The reference to ''identical'' terms and conditions requires that not only the substance of the terms and conditions be the same, but also that their wording be the same. Applications that are ''substantially identical'' may also have other factual differences not relating to the terms and conditions of the application.

In a similar vein, this commenter suggested that alternatively we issue standard template conditions for routine or frequently requested applications for exemptive relief.[54] Recent precedent would normally reflect the latest approved terms and conditions, so we do not believe creating a template would increase the effectiveness of the rule. We believe that when a line of applications becomes so routine that standard terms and conditions could be articulated, a better approach would be to consider codifying such relief in a new rule under the Act that would make applications unnecessary.[55] Further, as noted above, minor modifications would generally not disqualify an application from the expedited review process. Applicants may also use the standard review process to make more extensive modifications to develop new lines of relief.

Finally, another commenter requested that the Commission provide guidance regarding the objective criteria used to determine that an application is ''substantially identical'' to a precedent application (and therefore eligible for expedited review).[56] Under the rule amendments we are adopting, ''substantially identical'' applications are applications containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested. While it is impossible to identify what all those factual differences may be for any future line of expedited applications, we believe that filed applications that have been approved, including any amendments thereto, will provide additional useful guidance to applicants in this respect.

Number of Precedents

Under the rule as adopted, an application may be filed under expedited review if it is substantially identical to two precedent applications for which an order granting the requested relief has been issued within three years of the date of the application's initial filing.[57] Some commenters suggested that we only require one precedent application to qualify for expedited review.[58] One of these commenters opined that where the Commission is comfortable enough to provide relief to one applicant, subsequent applicants that meet the requirements should receive the same treatment.[59] Other commenters, instead, agreed with our proposal that two precedents is an appropriate number to qualify for an expedited review process.[60]

After considering these comments, we continue to believe that requiring a minimum of two precedents is appropriate. As one of the commenters supporting our proposal noted, two prior precedents demonstrate that a line of relief is established so that a faster review is appropriate, while minimizing burdens on applicants.[61]

Lookback Period

We proposed to require that the precedents used for expedited review have been issued within the last two years prior to the filing of the application in question.[62] The proposed two-year requirement was designed to help ensure that the precedents are relatively recent, so that in most cases, it is less likely that there would be questions as to whether the terms and conditions of the precedent applications are still appropriate. We requested comment on whether the two year standard was appropriate. After consideration of the comments we received, discussed further below, we are extending the lookback period to three years.

One commenter believed our proposed two-year lookback period was too long given the rate of change in the investment management industry, and said it should be 18 months.[63] Most commenters, however, thought it was too short. They argued that it should be five years to make the expedited procedure more widely available considering that there may be lines of applications that continue to be routine even if the Commission has not approved two applications in that line within the last two years.[64] Several of these commenters also proposed alternative options. One commenter proposed an alternative of one application within three years, and two within five years.[65] Another commenter proposed an alternative of one application within two years, and two within five years.[66]

In choosing the proposed lookback period, we sought to make the expedited procedure available only when more limited review is needed to ensure that an application include terms and conditions that justify granting the requested relief. Accordingly, we sought to exclude from expedited review applications that used older precedent, which the Staff would need to reevaluate in light of industry and regulatory developments.

We believe that extending the lookback period to five years would frustrate our goal of creating a quicker and more efficient review process for appropriate applications. In particular, the Staff needs to review all applications that were approved after the precedent that applicant is relying on to ensure that the precedent includes up to date terms and conditions, and is otherwise consistent with the Commission's current policies. As a

[52] *See id.*

[53] Some commenters expressed concern about whether applicants with different affiliate structures from precedent applications would be able to satisfy the ''substantially identical'' standard. *See* ICI Comment Letter; Fidelity Comment Letter. To the extent that an applicant's affiliate structure is material to the relief requested, the applicant would not be able to meet the ''substantially identical'' standard.

[54] *See* ICI Comment Letter.

[55] Several commenters encouraged the Commission periodically to codify exemptive relief in rules. *See* Diane Smith Comment Letter; ICI Comment Letter.

[56] *See* SIFMA AMG Comment Letter.

[57] *See* rule 0–5(d)(1). An application may be filed under expedited review if it is substantially identical to more than two qualifying precedent applications as well. However, such an application would include exhibits with marked copies showing changes from only two qualifying precedent applications and an accompanying cover letter explaining why those two precedents were chosen. *See* 17 CFR270.0–5(e)(2) (rule 0–5(e)(2)) and (e)(3) (rule 0–5(e)(3)).

[58] *See* SIFMA AMG Comment Letter; Stradley Comment Letter.

[59] *See* SIFMA AMG Comment Letter.

[60] *See* ICI Comment Letter; Fidelity Comment Letter.

[61] *See* ICI Comment Letter.

[62] *See* Proposing Release, *supra* footnote 2, at 13.

[63] *See* Abigail Najera Comment Letter (18 months would ''ensure immediate relevance'' of the precedents selected).

[64] *See* AIC Comment Letter; Fidelity Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter; Stradley Comment Letter.

[65] *See* AIC Comment Letter.

[66] *See* SIFMA AMG Comment Letter.

result, the longer the lookback period is, the longer the review process needs to be. Based on Staff review of application filings, we believe that most lines of applications appropriate for the expedited review process will have at least two precedents in the two-year time period we proposed. We also believe extending the lookback period to three years in response to commenters' views will provide applicants with additional flexibility, without frustrating our goals described above. Accordingly, we are modifying the lookback period to three years.

Because we are extending the lookback period in response to the comments we received, to facilitate Staff review, we have revised the rule to require applicants to explain in their cover letter why they chose the particular precedents they are using. If more recent precedents were available, the applicant must explain why the precedents used, rather than the more recent precedents, are appropriate. This new provision will help ensure that applicants will only use older precedent when there is a good reason for doing so and will support the efficiency of the process by aiding the Staff's review of whether the precedent is appropriate.

Lines of Applications That Might Not Qualify for Expedited Review

Our proposal stated that certain kinds of applications appeared highly unlikely to be suitable for expedited review. These included, for example, applications filed under sections 2(a)(9), 3(b)(2), 6(b), 9(c), and 26(c) of the Act.[67] We explained that these types of applications are generally too fact-specific for applicants to be able to meet the substantially identical standard. Our proposal also said that other lines of applications would also usually not meet the standard for expedited review.[68]

In our proposal, we requested comment on whether these types of applications are unlikely to be suitable for expedited review and whether the proposed rule should explicitly exclude them from expedited review.

Some commenters argued that the rule should explicitly exclude certain types of applications, with one commenter recommending that we should exclude all of the applications discussed, as the Commission did in its 1993 expedited review proposal,[69] to avoid creating uncertainty about such applications.[70] Other commenters suggested excluding applications under section 26(c) of the Act,[71] or applications that ''change the deal'' on investors, saying that such applications should only be granted sparingly after appropriate and due consideration.[72]

Another commenter disagreed with our statement in the Proposing Release that co-investment applications would usually not meet the standard for expedited review.[73] This commenter stated that co-investment applications could satisfy the ''substantially identical'' standard, and that they should be eligible for expedited review.[74]

After considering these comments, we are not explicitly excluding any particular types of applications from expedited review. We continue to believe, based on Staff experience, that certain lines of applications will generally not satisfy such standard because they are too fact specific to meet the substantially identical standard, as discussed above.[75] That is, while the terms and conditions may be substantially identical, the Staff looks at particular facts and circumstances outlined in the application to evaluate whether the requested relief meets the applicable standard.[76] Were circumstances to arise, however, in which an application in those lines can satisfy the ''substantially identical'' standard, the Staff may be able to proceed under expedited review.[77] If rule 0–5 explicitly excluded those applications from expedited review, the Staff would not have such option regardless of whether the application in substance is suited for expedited review. We believe that maintaining this flexibility is important so as not to frustrate the purpose of the rule.

2. Additional Information Required for Expedited Review

Applicants seeking expedited review will need to include certain information with the application under 17 CFR 270.0–5(e) (rule 0–5(e)), as we had proposed. Title 17 CFR 270.0–5(e)(1) (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).'' This requirement will assist the Staff in quickly identifying and effectively processing the request for expedited review. Rule 0–5(e)(2) requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of the two precedent applications. These exhibits will help the Staff to readily discern any variations between the application seeking expedited review and the precedent applications. Rule 0–5(e)(3) requires an accompanying cover letter, signed, on behalf of the applicant, by the person executing the application, (i) identifying the two substantially identical applications that serve as precedent, explaining why the applicant chose those particular precedents, and, if more recent applications of the same type have been approved, why the precedents chosen, rather than the more recent applications, are appropriate; and (ii) certifying that the applicant believes the application meets the requirements of 17 CFR 270.0–5(d) (rule 0–5(d)) and that the marked copies required by rule

[67] *See e.g.,* Bridgeway Capital Management, Inc., Investment Company Act Release Nos. 28685 (Apr. 1, 2009) (Notice of Application) and 28716 (Apr. 28, 2009) (Order) (declaration regarding control, section 2(a)(9) application); Exact Sciences Corporation, Investment Company Act Release Nos. 33228 (Sept. 14, 2018) (Notice of Application) and 33267 (Oct. 11, 2018) (Order) (inadvertent investment companies, section 3(b)(2) application); Hudson Advisors L.P., et al. Investment Company Act Release Nos. 32804 (Aug. 31, 2017) (Notice of Application) and 32834 (Sept. 26, 2017) (Order) (employees securities company, section 6(b) application); Charles Schwab & Co. Inc. and Charles Schwab Investment Management, Inc., Investment Company Act Release Nos. 33157 (July 10, 2018) (Notice of Application) and 33195 (Aug. 7, 2018) (Order) (ineligible—disqualified firm, section 9(c) application); AXA Equitable Life Insurance Company, et al., Investment Company Act Release Nos. 33201 (Aug. 15, 2018) (Notice of Application) and 33224 (Sept. 11, 2018) (Order) (fund substitution, section 26(c) application).

[68] *See* Proposing Release, *supra* footnote 2, at n.32. *See infra* footnote 75.

[69] *See supra* footnote 30.

[70] *See* Comment Letter of John Smith (Nov. 29, 2019) (''John Smith Comment Letter'') (noting that when the Commission proposed expedited review procedures in 1993, it explicitly excluded certain types of applications, and that in the Proposing Release we did not explain why we are reversing that position).

[71] *See* Capital Group Comment Letter (stating that the Commission's and Staff's role in evaluating these applications is critical because they present conflicts of interest in which investors' judgment is being replaced).

[72] *See* Ed Snoke Comment Letter (pointing, as examples, to substitution and multi-class applications).

[73] *See* AIC Comment Letter.

[74] *See id.*

[75] In addition to the lines of applications discussed in our proposal, investment company deregistration applications filed under section 8(f) are also unlikely to be suitable for expedited review.

[76] For example, when considering applications seeking an order under section 3(b)(2) of the Act declaring an applicant to be engaged in a business other than that of investing, reinvesting, owning, holding, or trading securities, we examine, among other things, the applicant's historical development, public representations of policy, directors' and officers' activities, as well as the nature of the applicant's assets and the sources of its income. *See e.g.,* Lyft, Inc., Investment Company Act Release Nos. 33399 (Mar. 14, 2019) (Notice of Application) and 33442 (Apr. 8, 2019) (Order).

[77] Co-investment applications that meet the substantially identical standard will also be eligible for expedited review. *See supra* footnote 68, Proposing Release at footnote 32.

0–5(e)(2) are complete and accurate.[78] These requirements are largely the same as proposed, with one modification to include the requirement, discussed in Section II.A.1 above, to explain why the applicant chose particular precedents.

We requested comment on whether the proposed requirements were appropriate. One commenter supported our proposed requirement for this additional information, saying that it did not believe the requirements would be unduly burdensome.[79] Another commenter suggested that even if we require two precedents, marked copies against both precedents would be redundant and of limited value, and we should only require one marked copy.[80] The commenter further stated that the cover letter and certification are also unnecessary because the marked copy will indicate the precedent used, and the notation on the cover page indicates that the applicant believes that the application qualifies for expedited review. The commenter suggested that we could instead require applicants seeking expedited treatment to expand the verification required by 17 CFR 270.0–2(d) (rule 0–2(d) under the Act) to verify that the marked copies submitted to qualify for expedited treatment are complete and accurate to the best of the signer's knowledge.[81]

After considering these comments, we continue to believe that the additional information we are requesting will help ensure the expedited procedure works as intended without being unduly burdensome to applicants. First, we believe it is necessary for the Staff to review marked copies of the application against both precedents submitted in order to allow the Staff to verify whether the new application is substantially identical to both such precedents. Second, while we understand that the fact that an application is filed for expedited review, as indicated by its cover page notation, may implicitly convey that the applicant believes it qualifies for expedited review, the requirement for a certification in the cover letter should work to ensure that applicants have confirmed that the application meets all the requirements for the expedited review.[82] Expanding the verification required by rule 0–2(d), as suggested by one commenter, would not serve the same function as this requirement because rule 0–2(d) does not address the qualification requirements of the new expedited review process. Additionally, because the applicants make, review, and submit to the Commission the marked copies, we believe they can certify that such marked copies are complete and accurate. Accordingly, we are adopting 17 CFR 270.0–5(e) (rule 0–5(e)) substantially as proposed.

3. Expedited Review Timeframe

Under 17 CFR 270.0–5(f), a notice for an application submitted for expedited review will be issued no later than 45 days from the date of filing[83] unless the applicant is notified that the application is not eligible for expedited review because (i) it does not meet the criteria in rule 0–5(d) or rule 0–5(e), or (ii) additional time is necessary for appropriate consideration of the application. We have changed the timeline for the Staff's review of unsolicited amendments, as discussed below. We are also modifying this portion of the rule to clarify that an application will not be eligible for the expedited review procedure if it does not comply with the requirements of rule 0–5(e).

We proposed 45 days as the timeframe for expedited review, based on the Division's experience considering and acting on routine applications. Commenters were generally supportive of the 45-day timeframe.[84]

While we anticipate that the notice for an application meeting rule 0–5(d)'s criteria will typically be issued within the 45-day timeline, there may be situations where further consideration is necessary for appropriate consideration of the application.[85] These may include, for example, cases where the Commission is considering a change in policy that would make the requested relief, or its terms and conditions, no longer appropriate. There also may be cases where the Staff is investigating potential violations of Federal securities laws that may be relevant to the request for relief.[86] In such cases, the Staff might not be in a position to make a determination on the application at the end of the 45-day period.

If the Staff notifies the applicant under rule 0–5(f)(1)(ii) that an application is not eligible for expedited review, it will give the applicant the option to either withdraw the application or amend it to make changes so that the application could proceed outside of the expedited review process. In connection with the amendments to rule 0–5, we are also amending 17 CFR 200.30–5 to delegate to the Division Director the authority to notify an applicant under rule 0–5(f)(1)(ii) that an application pursuant to the Act is not eligible for expedited review under rule 0–5.

Certain conditions will govern the operation of the 45-day time period. We proposed that the 45-day period would restart upon the filing of any amendment that the Commission or Staff did not solicit because the Staff would need additional time to review the change or changes made in such an amendment.

Several commenters had suggestions for modifying the timeframe for unsolicited amendments in expedited review.[87] One commenter stated that applicants sometimes amend applications to correct or update factual information that is immaterial to the legal analysis or request for relief.[88] This commenter and others recommended that we instead establish a 14-day pause for immaterial unsolicited amendments, and a 45-day period only for material unsolicited amendments.[89] Another commenter suggested that the review period for unsolicited amendments be limited to 14 days when the applicant provides the Staff with a representation

[78] Section 34(b) of the Act makes it unlawful for any person to make any untrue or misleading statement of material fact in any registration statement, application, report, account, record, or other document filed or transmitted under the Act, or to omit from any such document any fact necessary in order to prevent the statements made therein from being materially misleading. We recognize that in certain cases an applicant and its counsel may view an application to be ''substantially identical'' under rule 0–5(d)(2), even if the application is ultimately found not to meet such requirement under 17 CFR 270.0–5(f)(1)(ii) (rule 0–5(f)(1)(ii)). Complete and accurate marked copies must, among other things, show the changes in the application from the final versions of the two precedents that were filed on EDGAR (as opposed to earlier drafts).

[79] *See* ICI Comment Letter.

[80] *See* Stradley Comment Letter.

[81] *See id.*

[82] To the extent applicants' confirmation helps prevent the submission of applications that are not suitable for expedited review, Staff time and resources will not be spent unnecessarily, and our overall objective of efficiency will be furthered.

[83] Notice of the application, followed by an order concluding the matter, will be issued under current rule 0–5(a) and (b), respectively.

[84] *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter; SBIA Comment Letter.

[85] One commenter, noting that our proposed new rule for applications outside of expedited procedure states that it does not create enforceable rights, suggested that we clarify whether the new expedited review process creates an enforceable right for applicants, and if so, what possible damages would be. *See* John Smith Comment Letter. The creation of a new expedited process under rule 0–5 does not create any enforceable rights (in judicial proceedings or otherwise).

[86] To the extent such circumstances are nonpublic and are not known to the applicant, the Staff may not be able to inform the applicant of the reason for the delay.

[87] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Fidelity Comment Letter.

[88] *See* ICI Comment Letter.

[89] *See* ICI Comment Letter; Fidelity Comment Letter.

that the amendment does not contain material changes and the applicant supplies a marked copy of the amendment highlighting the changes from the previous filing.[90]

We understand that these modifications would provide applicants more flexibility to make changes to their application without triggering another 45-day review period. We believe, however, that it is important for the benefits created by such flexibility to justify the resulting burden on the review process. Accordingly, we are changing the timeline for Staff review of unsolicited amendments to 30 days. The expedited process rule that we are adopting pauses the 45-day review period upon the filing of an unsolicited amendment, and the 45-day review period resumes running on the 30th day after such amendment is filed.[91] Notwithstanding this provision, however, the Staff may act before the end of such pause, if the unsolicited amendment only encompasses minor changes. We believe that this modification will increase applicants' flexibility to revise their applications by shortening the resulting potential extension of the timeline, while still providing the Staff with sufficient time to review such unsolicited changes.

In addition, as proposed, any comment by the Staff requesting a modification of the application will pause the 45-day period. Although the Commission anticipates that the Staff will issue few such comments on an application that qualifies for expedited review, there may be times when a comment is necessary, for example, to either reflect an event that occurred after the application was filed or to resolve technical matters.[92] There may also be times when a revised term or condition is being added in a line of routine applications and the Staff may ask applicants to make corresponding changes to their application.

The amended rule provides that the 45-day period will pause upon such a request by the Staff and will resume 14 days after the filing of an amended application that is responsive to such request. The Staff will need the additional time to review the amended application and determine whether a notice can be issued under 17 CFR 270.0–5(f)(1)(i). Based on the Division's experience regarding amendments to routine applications, we are adopting 14 days as the appropriate amount of time for the Staff to make this determination. Commenters were supportive of this aspect of the rule.[93]

Additionally, the rule provides that the 45-day period will pause upon any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in Federal appropriations, national emergency, inclement weather, or ad hoc Federal holiday. The 45-day period will resume upon the reopening of the Commission's Washington, DC office to the public for normal business.[94]

The rule further provides that, if applicants do not file an amendment responsive to the Staff's requests for modification within 30 days of receiving such requests, including a marked copy showing any changes made and a certification that such marked copy is complete and accurate, the application will be deemed withdrawn.[95] This withdrawal will be without prejudice, but if the applicant were to resubmit the application, a new timeframe would begin. In adopting this rule, we are committing to processing routine applications promptly. We believe that applicants seeking to benefit from the expedited processing should act expeditiously.[96]

B. Timeframe for ''Standard Review'' of Applications

In addition to an expedited review process, the Commission is also adopting a rule to provide a timeframe for all other applications filed under rule 0–5. We believe that rule 17 CFR 202.13 will provide applicants with added transparency regarding the timing of the review of applications. Currently, the Division uses an internal performance timeline to govern the timing of Staff responses to applications and amendments. While the Staff in recent years has been successful in meeting the applicable timeline, and has recently moved to the same 90-day timeline set forth by the proposed rule,[97] the rule should result in a more transparent timeline, including the time at which the Staff would forward an application to the Commission. We are modifying the rule from the proposal to shorten the timeline for Staff action in some instances.

Under the rule we are adopting, the Staff should take action on the application within 90 days of the initial filing and each of the first three amendments thereto, and within 60 days of any subsequent amendment.[98] In addition, the Staff may grant 60-day extensions, and applicants should be notified of any such extension.[99]

For the purposes of the rule, and as proposed, action on an application or amendment consists of (i) issuing a notice of application; (ii) providing the applicants with comments; or (iii) informing the applicants that the application will be forwarded to the Commission, in which case the application is no longer subject to paragraph (a) of the rule.[100] If the Staff does not support the requested relief, the Staff typically notifies applicants that it would recommend that the Commission deny the application and gives applicants the opportunity to withdraw the application before such recommendation is made.[101]

We requested comment on this timeframe for ''standard review'' of applications.[102] There was broad support generally for our proposed 90-day timeframe for initial applications.[103] Several commenters recommended limiting the Staff's ability to extend the review period or reducing the Staff's time to review amendments. One commenter suggested that the Commission enumerate the circumstances upon which the Staff can grant itself 90-day extensions, and/or provide only the Division Director the ability to grant extensions on matters not enumerated but substantially similar to those described in the rule.[104]

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[90] *See* SIFMA AMG Comment Letter.

[91] *See* 17 CFR 270.0–5(f)(2)(i)(B).

[92] In cases where an application is not substantially identical to precedent, the Staff will notify the applicant under rule 0–5(f)(1)(ii) that the application is not eligible for expedited review. Using the comment process to ensure that an application is substantially identical to precedent would require Staff time and defeat the purpose of the expedited review process. *See supra* Section II.A.1. We believe that, as applicants gain familiarity with the ''substantially identical'' standard in practice, the application process will run smoothly.

[93] *See* Fidelity Comment Letter; ICI Comment Letter.

[94] *See* 17 CFR 270.0–5(f)(2)(i)(C).

[95] *See infra* footnote 119.

[96] If an applicant takes longer than 30 days to respond to Staff comments, the application may not be appropriate for expedited review.

[97] *See supra* Section II.B.

[98] As with the expedited review process, the standard review period will also pause upon any irregular closure of the Commission's Washington, DC office to the public for normal business. *See* 17 CFR 202.13(a).

[99] The provisions of this rule, including the timeframes provided for, are not intended to create enforceable rights by any interested parties and shall not be deemed to do so. Rather, this rule provides informal non-binding guidelines for the Division and procedures that the Commission anticipates the Division following. *See* 17 CFR 202.13(c).

[100] *See* 17 CFR 202.13(b).

[101] *See supra* footnote 16.

[102] *See* Proposing Release, *supra* footnote 2, at 22.

[103] *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter.

[104] *See* ICI Comment Letter. The commenter further recommended that the Commission require the Division Director to review and/or approve additional extensions beyond the first 90-day extension. While it might not be practicable for the

Continued

Two commenters suggested ways of constraining the Staff's ability to grant multiple 90-day extensions.[105] One of those commenters recommended that the Commission consider a deadline for final action on standard review applications.[106] The other commenter stated that the ability to issue unlimited 90-day extensions would undermine the efficacy of the proposed standard review timeframe, and suggested an approach similar to expedited review in which the 90-day period would pause, as opposed to restart, for the comment process, and only restart upon applicants filing an unsolicited amendment.[107]

Three commenters suggested shortening the length of the extensions and reducing the review time for amendments.[108] One commenter suggested extensions should be for 30 days, so that the maximum internal deadline would be 120 days, absent an amendment.[109] Another commenter stated that a 90-day extension period is excessive and that it should be shortened to 45 days.[110] That commenter said that because Staff reviews of subsequent amendments are not *de novo,* they should not take as long as the review of the initial application filing.[111] Another commenter recommended that for applications under standard review, the Staff have 14 business days to review solicited amendments and immaterial unsolicited amendments, and 90 business days to review material unsolicited amendments.[112]

In addition to comments regarding the timeframe, we received a few comments that addressed whether Staff action should be required. One commenter stated that the proposed rule would undermine the Commission's policy goals because it only states that the Staff ''should take action'' without actually requiring Staff action within 90 days. The commenter suggested that we require Staff action or communication to the applicant to occur within 90 days.[113] That commenter further suggested that any such required actions or communications include providing applicants with substantive status updates, such as whether the Division has shared the applications with another Commission division.[114] Another commenter recommended that we require the Staff to provide applicants with an update regarding the status of their application at approximately the mid-point of the review period.[115]

We are adopting the rule with modifications to address some concerns raised by commenters. Our intention is to provide applicants with more transparency and certainty regarding the timing of the review of applications. At the same time, it is essential that the Staff retain the ability to appropriately consider the relevant legal and policy issues. By filing an application, applicants are seeking exemptions or other relief under the Act. The Division may grant such relief under delegated authority only if the applicable standard is satisfied. Accordingly, the rule must preserve some flexibility for situations where more time is needed for appropriate consideration of an application. If the rule were to limit the number of extensions, and the Staff were not in the position to approve an application under delegated authority, the Staff might be unable to recommend that the Commission approve the application. Such a result would make the application process less efficient than the alternative of a further extension.

In response to the concerns raised about the possibility of the comment process extending too long, however, the final rule provides for shorter timelines than those we proposed in order to provide shorter timeframes for Staff review of certain subsequent amendments. In particular, the rule provides that after the third amendment to an application, the Staff should take action on any subsequent amendments within 60 days of their filing.[116] We also are decreasing the length of any extensions to the timelines by the Staff from 90 days to 60 days.[117] We believe these changes will help move the review process towards its conclusion, while at the same time preserving the flexibility that the Staff needs to make sure that the requested relief satisfies the relevant statutory standard.

Applicants' responsiveness to Staff comments is an essential component of a successful and timely application process. We have previously stated that the Staff should not have to spend an inordinate amount of time processing clearly deficient applications at the expense of delaying action on other applications.[118] Consistent with this longstanding policy, if the Staff issues comments on an application and the next amendment filed is not responsive to those comments, the Staff will repeat such comments, direct the applicant to explain why the comments were not addressed, or potentially recommend that the Commission deny the application.

Finally, we do not support imposing specific requirements for communication between the Staff and applicants. At the outset of each review, the Staff provides applicants with the contact information for the Staff. Our Staff is always available to applicants and, in fact, applicants frequently contact the Staff to inquire about their application's current status. We also do not believe the Staff should be required to notify applicants if the Division shares their application with another Commission division, because such communications may involve nonpublic internal deliberations. Accordingly, we do not believe that communication schedules fixed by rule are needed to foster more effective communication.

C. Applications Deemed Withdrawn Under the Standard Review Process

The Commission is also amending rule 0–5 to deem an application withdrawn if the applicant does not respond in writing to Staff comments. Deeming inactive applications withdrawn will both assist us in maintaining a clear record of pending applications, as well as provide the public, including potential new applicants, with a better sense of the applications that the Commission is actively considering at any given time.

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 this section within 120 days after

Director only to be able to review and approve extensions, we expect that the Division will review and approve such extensions in situations where necessary for the appropriate consideration of an application.

[105] *See* Stradley Comment Letter; Fidelity Comment Letter.

[106] *See* Stradley Comment Letter.

[107] *See* Fidelity Comment Letter.

[108] *See* Stradley Comment Letter; SIFMA AMG Comment Letter; ICI Comment Letter.

[109] *See* Stradley Comment Letter.

[110] *See* SIFMA AMG Comment Letter.

[111] *See id.*

[112] *See* ICI Comment Letter.

[113] *See id.*

[114] *See id.*

[115] *See* SIFMA AMG Comment Letter.

[116] *See* 17 CFR 202.13(a). We do not believe that the review process for amendments to applications should always be shorter than the initial review. With many novel applications, or other applications departing from precedent, the Staff's initial comments typically identify threshold issues, which the Staff then considers more in depth in subsequent reviews of the application, on the basis of the applicants' responses. The Staff's review of those responses, as well as discussions on how to address those issues in the applications, often take more time than the review of the initial filing. Accordingly, we do not believe that a shorter review period for the first few amendments is appropriate.

[117] *See* 17 CFR 202.13(a).

[118] *See* Commission Policy and Guidelines for Filing of Applications for Exemption, Investment Company Act Release No. 14492 (Apr. 30, 1985).

the request, the application will be deemed withdrawn.[119] The withdrawal will be without prejudice and the applicant would be free to refile, however the timeline would restart with the new application.[120]

One commenter said that it did not have any recommendations regarding this aspect of our proposal, but requested clarification of how the Staff would treat an application that the Staff requests to be withdrawn and an applicant declines to withdraw.[121] Withdrawals under rule 0–5(g) will happen by operation of law. Applicants will not need to take any affirmative action to cause the withdrawal.

Another commenter suggested that applicants be able to request extensions to the response period before withdrawal occurs to ensure that Staff comments and applicant responses are not made public prematurely.[122] We believe this concern is now moot given we are not moving forward at this time with publicly disseminating Staff comments on applications, and responses to those comments, as discussed below.[123]

D. Release of Comments on Applications and Responses

Finally, in our proposal we announced our intention to begin to disseminate publicly Staff comments on applications, and responses to those comments and stated that we believed it would improve the transparency of the application process.

Most commenters recommended against public dissemination of Staff comments and responses, expressing a number of concerns.[124] First, they argued that public dissemination would discourage innovation in the fund industry and thwart open dialogue between applicants and the Staff.[125] The commenters noted that applications may present novel ideas and explained that initial applicants would become reluctant to share proprietary information with the Staff regarding these ideas, given that dissemination of such information could provide competitive advantages to third parties.[126] Second, commenters believe that public dissemination may also lead to increased confidential treatment requests for materials filed in connection with applications, thus substantially increasing the administrative burden on applicants and the Staff.[127] Further, to avoid the dissemination of information, applicants may choose to communicate with the Staff orally rather than in writing, which would make communications with the Staff less effective in sharing relevant information.[128] Consequently, the commenters believe that public dissemination of comments and responses to those comments would generally increase burdens on applicants and the Staff and make the application process less efficient.[129]

Third, commenters opposing public dissemination noted that information disclosed would be of little utility to investors, given it is not the type of information relevant to investment decisions.[130] The commenters were also concerned that the information may be confusing to the public given that written correspondence from various stages in the review of an application may present an incomplete picture of the review process and the resolution of the relevant issues.[131]

Some commenters also distinguished the applications process from the review of disclosure filings, for which the Staff currently publicly disseminates comments.[132] In particular, the commenters noted that certain registration statement amendments can become effective automatically, and thus there may be benefit to publishing comments because there would be no other public record.[133] Conversely, applications do not have automatic effectiveness; applicants file and amend an application publicly, and such amended application, together with the Commission notice of an application, provide a fulsome record of the issues considered during the application's review.[134]

However, some commenters supported public dissemination of comments and responses to comments. Those commenters believed that it would be beneficial for future applicants to be able to review the Staff's comments and applicants' responses, enhancing transparency.[135]

While the Commission plans to continue to consider publicly disseminating Staff comments and response to those comments, the comment letters discussed above raised issues with respect to this proposal that merit further consideration. Accordingly, comments and responses will not be disseminated at this time.

E. Other Matters

Pursuant to the Congressional Review Act,[136] the Office of Information and Regulatory Affairs has designated these amendments as not ''a major rule,'' as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

III. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 2(c) of the Act states that when the Commission is engaging in rulemaking under the Act and is required to consider or determine whether the action is necessary or

[119] An application requesting expedited review will not be subject to this withdrawal provision because under rule 0–5(f)(2)(iii), it will be deemed withdrawn if the applicant has not filed an amendment responsive to a Staff request for modifications within 30 days.

An applicant can request to withdraw an application with a letter filed as form APP–WD on EDGAR, with the corresponding permission being filed as form APP–WDG on EDGAR. The Staff will reflect that an application is deemed withdrawn under rule 0–5(g) by uploading a form APP–WDG on EDGAR, without need for any action by the applicant. The Staff intends to reflect the withdrawal by uploading the form APP–WDG generally within 30 days after the end of the 30-day period for expedited applications and the 120-day period for other applications.

[120] Under rule 17 CFR 203.13, the 90-day timeline for Staff comments applies to all new applications even if a predecessor withdrawn application was subject to the 60-day timeline applicable to certain amendments.

[121] *See* ICI Comment Letter.

[122] *See* SIFMA AMG Comment Letter.

[123] *See infra,* discussion in Section II.D.

[124] *See* ICI Comment Letter; IAA Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter; Stradley Comment Letter.

[125] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Stradley Comment Letter.

[126] *See* ICI Comment Letter.

[127] *See* ICI Comment Letter; IAA Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter; Stradley Comment Letter.

[128] *See* ICI Comment Letter; SIFMA AMG Comment Letter.

[129] *See* ICI Comment Letter; Fidelity Comment Letter; Stradley Comment Letter.

[130] *See* ICI comment letter; Fidelity Comment Letter; SIFMA AMG Comment Letter.

[131] *See* Stradley Comment Letter. *See also* Fidelity Comment Letter.

[132] In our proposal, we noted that dissemination of comments on applications and responses to those comments would follow a process similar to the process that the Division of Investment Management's Disclosure Review and Accounting Office uses to publicly disseminate comment letters and responses on disclosure filings.

[133] *See* ICI Comment Letter.

[134] *See* ICI Comment Letter; Stradley Comment Letter.

[135] *See* Capital Group Comment Letter. *See also* Ed Snoke Comment Letter and Diane Smith Comment Letter (suggesting release of comments at the time of the notice to help for the basis for any hearing request on the application). We note that the publicly available application as well as the Commission notice of the application provide the public with the relevant information on which to base a hearing request.

[136] 5 U.S.C. 801 *et seq.*

appropriate in (or, with respect to the Act, consistent with) the public interest, the Commission shall consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. The following analysis considers the potential economic effects that may result from amended rule 0–5, including the benefits and costs to applicants and other market participants as well as the broader implications of the rule for efficiency, competition, and capital formation.

Amended rule 0–5 creates an expedited review process for applicants whose application is substantially identical to two previously approved precedential applications. The rule further provides that an application for relief will be deemed withdrawn if the applicant does not respond in writing within 120 days of a request for clarification or modification of the application.[137] Overall, we anticipate that these amendments will benefit both applicants and investors by allowing eligible applicants to realize the benefits of relief more quickly than under the current process, which generally will be shared with fund shareholders. Additionally, we expect the amendments to result in cost savings associated with the application process, which could be passed on to investors. As discussed below, we anticipate that we will receive approximately 50 applications per year seeking expedited review under the Act.

The scope of the benefits and costs of amended rule 0–5 depends on the expected volume of applications generally as well as the expected volume of applications for expedited review in particular. Those benefits and costs also depend on the extent to which applicant experience under amended rule 0–5 is expected to differ from current experience. Below, we describe the number of applications as well as the time the Commission takes in responding to such applications.

B. Economic Baseline

1. Applications for Relief

The table below reports the number of initial applications by category and calendar year for 2017, 2018, and 2019.[138]

Exemption type [1]	2017	2018	2019	Total
12(d)(3)	0	1	0	1
Affiliated Sales	2	2	0	4
Business Development Companies	1	2	1	4
Co-Investment	21	15	14	50
Deregistration	0	0	1	1
Distributions	1	4	1	6
Employees Securities Company	4	1	2	7
Exchange-Traded Funds	39	33	22	94
Family Office	0	1	0	1
Fund of Funds—Multi-Group	9	3	2	14
Inadvertent Investment Companies	1	0	0	1
Ineligible—Disqualified Firm	1	1	0	2
Insurance Products	4	2	1	7
Inter-fund Lending	5	1	3	9
Interval Funds	2	0	0	2
Joint Transaction	0	3	0	3
Multi-Class	11	9	5	25
Multi-Manager	14	9	6	29
Other	8	10	11	29
Unit Investment Trusts—Other	1	0	1	2
Total	124	97	70	291

[1] *See* U.S. Securities and Exchange Commission, Investment Company Act Notices and Orders: Category Listing, available at *https://www.sec.gov/rules/icreleases.shtml.*

Among the 291 applications shown in the above table, the largest broad categories of applications are applications related to exchange-traded funds (94, or 32 percent of applications) and applications related to co-investment (50, or 17 percent of applications).[139] Together, these two categories of applications make up 144, or 49 percent of applications from 2017 to 2019.

The table below reports the number of amended filings associated with the 291 initial applications from 2017 to 2019, for those initial applications that resulted in notices from 2017 to 2019.[140]

NUMBER OF AMENDED FILINGS

0	1	2	3	4	>4	Total
42	90	39	17	9	5	202

[137] *See supra* footnote 119.

[138] We use a combination of EDGAR and internal data for this baseline analysis. The table includes initial applications that were initially filed from 2017 to 2019.

[139] The Commission's recent adoption of rule 6c-11 will permit exchange-traded funds that satisfy certain conditions to operate without obtaining an exemptive order. *See supra* footnote 24. Also, the Commission recently proposed new 17 CFR 270.12d1–4 (rule 12d1–4 under the Investment Company Act) that would, under specified circumstances, permit a fund to acquire shares of another fund in excess of the limits of section 12(d)(1) of the Act without obtaining an exemptive order from the Commission. *See* Funds of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) (84 FR 1286, Feb. 1, 2019).

[140] Eighty-nine initial filings did not result in a notice before December 31, 2019. Because the table provides information on the number of amended filings associated with applications that resulted in notices, those 89 initial filings are excluded from the sample.

Of the 202 applications from 2017 to 2019, 42 (21 percent) initial applications resulted in a notice without any amendment. Ninety (45 percent) applications resulted in a notice after one amendment to the initial application. Overall, 70 (35 percent) initial applications required two or more amended applications prior to receiving a notice.

2. Review Process

The current rules governing applications for exemption serve as a baseline against which we assess the economic impacts of amended rule 0–5. At present, there are no rules under the Act or other rules governing timeframes for Commission consideration of applications for exemption. While rules governing timeframes for the consideration of applications for exemption have not been formalized, in 2008 the Staff adopted the performance target of providing comments on at least 80 percent of initial applications within 120 days after their receipt.[141] For filings made on or after June 1, 2019, the Division has now implemented a new internal target of providing comments on both initial applications and amendments within 90 days.

The table below summarizes the number of days between an applicant's initial filing and a response from the Commission from 2017 to 2019.

Year	Mean	% ≤45 days	% ≤90 days	% ≤120 days
2017	85	16%	46%	98%
2018	95	10	37	91
2019	66	30	84	100
Overall	84	18	52	96

We note that the prolonged Government shutdown from December 22, 2018 to January 25, 2019 (35 days) affected turnaround times for those applications initially submitted in the latter portion of 2018, as the Staff was not able to review and process applications during that time. Overall, from 2017 through 2019, 18 percent of applicants experienced times between initial filing and a response from the Commission of 45 days or less. Fifty-two percent of applicants experienced times of 90 days or less, and 96 percent of applicants experienced times of 120 days or less.

C. Benefits and Costs of Amended Rule 0–5

We are adopting an expedited review process for routine applications and a new rule to deem an application for expedited exemptive relief withdrawn when an applicant fails to respond to Staff comments. These actions could have both direct as well as indirect effects. Because the actions affect the application process, the actions could affect both applicants and the Commission. Further, to the extent the actions have a direct effect on the Commission, there could arise an indirect effect on applicants as well as investors. These potential direct and indirect effects are discussed in the context of benefits and costs of the rule described below.

The magnitude of these estimated expected effects will depend, at least in part, on the extent to which anticipated outcomes differ from the baseline. For example, as noted above, we calculate that in recent years 18 percent of initial applications have received Commission response within 45 days.[142] The expected benefits and costs will depend on the extent to which the actions result in outcomes that differ from recent experience.[143]

1. Benefits

We expect that the adopted expedited review process will have the direct effect of allowing the benefits of relief to be realized by applicants more quickly than otherwise would be the case. Further, we expect that the adopted expedited review procedure will make the application process less expensive. For example, we believe that for applications that seek relief substantively identical to relief that the Commission has recently granted the new procedure will encourage applicants to submit applications that are substantially identical to precedent. Submitting applications that are substantially identical to precedent should reduce the cost of drafting applications as well as reduce costs associated with needing to file multiple amendments.

We estimate that the expedited review process will significantly reduce costs for applicants compared to applicants receiving orders under standard review. We believe the estimated total cost burden per application for applicants to receive an order for an average application under standard review utilizing outside counsel is approximately $74,550[144] and the estimated hour or cost burden per application for applicants utilizing in-house counsel will be approximately 150 hours or $58,800.[145] The Staff estimates that the total cost burden per application for applicants to receive an order for an application under the adopted expedited review utilizing outside counsel is approximately $14,910[146] and the estimated hour or cost burden per application for applicants utilizing in-house counsel will be approximately 30 hours or $11,760.[147] Therefore, the estimated costs for an application under the expedited review process equate to an 80 percent savings compared to the estimated costs for an average application under the standard review process.

The estimated savings for an application under expedited review compared to an average application under the standard review process would be approximately $59,640[148] per application utilizing outside counsel or

[141] *See supra* footnote 31.

[142] As discussed above, 52% of initial filings have received Commission action within 90 days.

[143] The expected benefits and costs will also depend on the amount of application activity. Recent Commission rulemaking and proposed rules, if adopted, could result in a reduction in the number of future applications. *See supra* footnote 35.

[144] This estimate is based on the following calculations: $497 (hourly rate for outside counsel) × 150 (estimated hours to receive an order for an application under standard review) = $74,550.

[145] This estimate is based on the following calculations: $392 (hourly rate for in-house counsel) × 150 (estimated hours to receive an order for an application under standard review) = $58,800.

[146] This estimate is based on the following calculations: $497 (hourly rate for outside counsel) × 30 (estimated hours to receive an order for an application under expedited review) = $14,910.

[147] This estimate is based on the following calculations: $392 (hourly rate for in-house counsel) × 30 (estimated hours to receive an order for an application under expedited review) = $11,760.

[148] This estimate is based on the following calculations: $74,550 (estimated total cost under standard review utilizing outside counsel) − $14,910 (estimated total cost under expedited review utilizing outside counsel) = $59,640.

120 hours [149] or $47,040 [150] per application utilizing in-house counsel. Accordingly, the expedited review process would decrease the total estimated annual cost burden by approximately $2,385,600 utilizing outside counsel and total estimated annual hour burden by approximately 1,200 hours utilizing in-house counsel.[151] The total estimated annual savings for the expedited review process for both outside and in-house counsel would be $2,856,000.[152] We expect that investors in entities utilizing the expedited review process will benefit to the extent those cost savings are passed along.

We expect that the adopted actions will also have a direct effect on the Commission. As discussed in Section I.C above, a significant factor affecting the time to review an application is often how the application has been drafted. Applications for which there is clear precedent often omit standard terms or conditions, or contain significantly different versions of the standard terms or representations, from the relevant precedent. These variances increase the time required for the Staff's review because the Staff must analyze the changes to determine whether they alter the scope or nature or appropriateness of the requested relief. To the extent the new procedure would encourage applicants for expedited review to submit applications that are substantially identical to precedent, we expect the new procedure to reduce the amount of Staff resources required to review such applications.

The anticipated reduction in Staff resources required to review applications could result in indirect effects associated with the adopted actions. In particular, to the extent Staff is able to devote greater resources to more novel applications, the benefits realized by applicants with more novel applications may be realized more quickly than otherwise would be the case. To the extent those benefits are passed along to investors, investors would experience indirect benefits as well. Additionally, to the extent these indirect benefits accrue to applicants with more novel applications, the adopted actions could foster the submission of a greater number of novel applications which could lead to greater innovation in investment products. Further, the adopted actions could benefit investors by enhancing competition among market participants, which we discuss in more detail below.

2. Costs

Adopted rule 0–5(d) creates the opportunity for applicants whose applications meet certain requirements to request expedited review subject to the requirements of adopted rules 0–5(d) and 0–5(e). The adopted amendment to rule 0–5 does not require potential applicants to request expedited review. Potential applicants for expedited review, then, would only bear the costs of requesting expedited review in those circumstances where the applicant believes the benefits justify the costs.

With respect to applications for expedited review, amended rule 0–5(e)(2) requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of the two precedent applications. Based on interactions with applicants and Staff experience, for those applicants relying on outside counsel to prepare two marked copies against two recent precedents, the estimated cost is $2,485 per application.[153] Applicants utilizing in-house counsel to provide two marked copies against two recent precedents would spend 5 hours or $1,960 per application.[154]

Amended 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).'' Amended rule 0–5(e)(3) further requires the accompanying cover letter to certify on behalf of the applicant 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 with an explanation on why the particular precedents were chosen. The written certification is similar to the representation required from counsel under 17 CFR 280.485 (rule 485) for post-effective amendments filed by certain registered investment companies.[155] Such a representation would be subject to section 34(b) of the Act.[156] Based on conversations with applicants and Staff experience, we expect the cost of these cover letter requirements to be $994 per application utilizing outside counsel [157] and 2 hours or $784 per application utilizing in-house counsel.[158]

We estimate we will receive approximately 50 applications [159] per year seeking expedited review under the Act. Therefore, we estimate that the new requirements will impose a total annual cost burden of approximately $139,160 utilizing outside counsel [160] and total annual hour burden of approximately 70 hours utilizing in-house counsel [161] for a cost burden of $27,440.[162] The total estimated annual cost burden for all applicants expected to seek expedited review, reflecting the use of both outside and in-house counsel, would be $166,600.[163]

Amended rule 0–5 also provides that, with respect to expedited reviews, if applicants do not file an amendment responsive to Staff's requests for modification within 30 days of receiving such requests, including a marked PDF copy showing any changes made and a certification that such marked copy is accurate and complete, the application will be deemed withdrawn. We believe the cost of complying with the 30-day requirement would be the same as complying with the current 60-day requirement.[164] We assume that those applicants requesting expedited review would likely bear an opportunity cost the longer the application process is delayed. Applicants for expedited review, then, will benefit from responding to Staff requests for modification in a more timely manner than they would under the current requirement.

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[149] This estimate is based on the following calculations: 150 (estimated total hours under standard review utilizing in-house counsel) − 30 (estimated total hours under expedited review utilizing in-house counsel) = 120.

[150] This estimate is based on the following calculations: $58,800 (estimated total cost under standard review utilizing in-house counsel) − $11,760 (estimated total cost under expedited review utilizing in-house counsel) = $47,040.

[151] This estimate is based on the following calculations:

$59,640 (estimated savings per application under expedited review) × 50 (estimated number of applications under expedited review, *see infra* footnote 182) × 0.80 (approximate percentage of applications prepared by outside counsel) = $2,385,600.

120 (estimated hours saved per application under expedited review) × 50 (estimated number of applications under expedited review, *see infra* footnote 182) × 0.20 (approximate percentage of applications prepared by in-house counsel) = 1,200.

[152] This estimate is based on the following calculations: $2,385,600 (estimated total cost savings utilizing outside counsel) + [1,200 (estimated total hours saved utilizing in-house counsel) × $392 (hourly rate for in-house counsel)] = $2,856,000. This estimate takes into account the incremental costs of the expedited review requirements.

[153] *See infra* footnote 186.

[154] *See infra* footnote 179.

[155] *See* rule 485(b)(4).

[156] *See supra* footnote 78.

[157] *See infra* footnote 186.

[158] *See infra* footnote 183.

[159] *See infra* footnote 176.

[160] *See infra* footnote 187.

[161] *See infra* footnote 180.

[162] *See infra* footnote 181.

[163] $166,600 = $139,160 (cost of utilizing outside counsel) + $27,440 (cost of utilizing in-house counsel).

[164] In the past, Staff placed an application on inactive status when an applicant did not respond to comments within 60 days. *See supra* footnote 19.

Adopted rule 0–5(g) additionally 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 will not stop an application from being deemed withdrawn, the ''in writing'' requirement will create an additional cost. We believe the ''in writing'' requirement will increase the burden by $994 per application for applicants relying on outside counsel.[165] Applicants utilizing in-house counsel would spend 2 hours or $784 per application.[166] We estimate we will receive approximately 90 applications [167] seeking standard review under the Act annually and of those 90 applications, we estimate that approximately 10 percent will result in applicants responding ''in writing'' to avoid the application's deemed withdrawal pursuant to rule 0–5(g). Therefore, the ''in writing'' requirement under rule 0–5(g) would increase the total estimated annual cost burden by approximately $7,157 utilizing outside counsel [168] and total estimated annual hour burden by approximately 3.6 hours utilizing in-house counsel [169] for an estimated cost burden of $1,411.[170] The total estimated annual cost burden for both outside and in-house counsel would be $8,568.[171]

D. Effects on Efficiency, Competition, and Capital Formation

This section evaluates the impact of adopted amendments to rule 0–5 on efficiency, competition, and capital formation.

Efficiency. We expect the expedited review process to benefit potential applicants directly by providing them an opportunity, subject to certain conditions, for expedited exemptive relief. Further, to the extent the adopted rule encourages applications that are substantially identical to precedent, we expect the adopted rule should reduce the likelihood of applicants needing to file amendments. To the extent the expedited review process allows applicants to realize the benefits of relief more quickly and with fewer filings, we would expect the operating efficiency of applicants to increase more quickly and to do so with a greater net benefit than under the existing application process.

As discussed above, applications for which there is clear precedent often omit standard terms or conditions, or contain significantly different versions of the standard terms or representations, from the relevant precedent. As a result, the Staff requires increased time and resources to review the changes to determine whether they alter the scope or nature of the requested relief. To the extent the new procedures would encourage applicants for expedited review to submit applications that are substantially identical to precedent, we expect the new procedures to reduce the amount of Staff resources required to review such applications and increase Staff resources available to review more novel applications. As a result, the benefits of any innovative features and new product types associated with novel applications could be realized by investors more quickly, thereby increasing investment efficiency (that is, the ability of investors to find and invest in funds that meet their particular needs or strategies) more quickly than under the current process.

Competition. The adopted rule would likely increase competition in those situations where applicants would meet the requirements for expedited review. The effect on competition is expected to operate through two channels. The first channel would be the speed with which potential competitors could realize the benefits of relief. The expedited review process would allow applicants to compete more quickly with prior applicants who already realized those benefits.[172] Second, to the extent the adopted expedited review process reduces the cost of applying for exemptive relief, the cost reduction would lower barriers to competing with those applicants who have already been granted relief.

Capital Formation. The adopted rule may lead to increased capital formation. As discussed above, to the extent the expedited review process allows applicants to realize the benefits of relief both more quickly and at a lower cost, we would expect the efficiency of the application process to increase, allowing more investor money to be used productively. The increased efficiency could also lead to more applications, including more novel applications. To the extent this results in a broader range of investment products, some investors may find new investment opportunities that more closely match their investment goals. This could induce these investors to invest additional money, increasing demand for intermediated assets as a whole and, as a result, facilitating capital formation.

Also, to the extent the new procedures would encourage applicants for expedited review to submit applications that are substantially identical to precedent, we expect the new procedures to reduce the amount of Staff resources required to review such applications and increase Staff resources available to review more novel applications. An increase in Staff resources available to review more novel applications could, in turn, lead to more applicants who would implement innovative features or create new types of products. To the extent investors do not substitute one type of product or feature for another and find new products and features valuable, an increase in the number of applications involving innovative features or new types of products, could increase the overall amount of resources investors are willing to invest and, as a result, facilitate capital formation.

E. Reasonable Alternatives

Rule 0–5(d)(1) provides that an applicant may request expedited review if the application is substantially identical to two other applications for which an order granting the requested relief was issued. As alternatives, the rule could require a single precedent or more than two precedents. Our decision to require two precedent applications reflects a balancing of the accessibility to the expedited review process and the likely need for additional consideration by the Staff. Increasing the number of required precedents would decrease the likelihood of additional Staff consideration, but it would likely reduce the number of potential applicants qualifying for expedited review. For example, if we were to require three precedent applications rather than two, the third application, which would qualify for expedited review under the adopted amendment to rule 0–5, would no longer be eligible for expedited review. Increasing the number of required precedents would also likely lengthen the amount of time before applicants could request expedited exemptive relief. For example, if we were to require three precedent applications rather than two,

[165] *See infra* footnote 188.

[166] *See infra* footnote 183.

[167] *See infra* footnote 182.

[168] *See infra* footnote 189.

[169] *See infra* footnote 184.

[170] *See infra* Section IV, PRA Table 1.

[171] $8,568 = $7,157 (cost of utilizing outside counsel) + $1,411 (cost of utilizing in-house counsel).

[172] To the extent the adopted expedited review process will allow subsequent applicants to compete more quickly, benefits to ''first-movers'' (*i.e.,* prior applicants, including the two relied on as precedent) may be reduced. We would expect any resulting effect on innovation to be minimal. In general, we anticipate that the expected gains from innovation will justify the expected loss in benefits associated with quicker competition.

to the extent precedent applications do not occur at the same time, applicants would have to wait for a third precedent application rather than being able to apply for expedited review after the second substantially identical application. Conversely, decreasing the number of required precedents would likely increase the number of potential applicants qualifying for expedited review, but it would increase the likelihood for additional Staff consideration. We believe the requirement of two precedent applications strikes an appropriate balance between those two competing considerations.

Further, the adopted rule requires the two precedent applications to have been filed within the past three years. Our decision to require precedents that have been filed over the past three years reflects a balancing of the accessibility to the expedited review process and the Staff resources required to review whether the terms and conditions of an application are still appropriate. Increasing the timeframe to greater than three years could increase the number of applicants qualifying for expedited review, but also increase Staff resources required to review whether the terms and conditions of an application are still appropriate. Conversely, shortening the timeframe to less than three years would reduce the amount of Staff resources required to review whether the terms and conditions of an application are still appropriate, but likely reduce the number of potential applicants who could qualify for expedited review. We believe the three year requirement strikes an appropriate balance between those two competing considerations.

Also, the adopted rule could require a broader standard than the ''substantially identical'' standard. The adopted rule creates a new process that we expect will be both faster and more certain in its timing than the current process, while increasing the Staff resources available to evaluate applications that may raise novel issues. Modifying the standard to permit more extensive differences from precedent applications would increase the number of potential applicants qualifying for expedited review, but would increase the proportion of Staff resources required to inquire about and consider the nature of these differences. Additionally, permitting more extensive differences from precedent would likely lead the Staff to issue more comments in the expedited process and/or transfer a greater number of applications to the standard process compared to the adopted standard, which could significantly impair our ability to achieve the objectives of the expedited process. We believe the substantially identical standard strikes an appropriate balance between those two competing considerations.

IV. Paperwork Reduction Act

The new rule amendments under the Act contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[173] The title for the new collection of information is ''Rule 0–5 under the Investment Company Act, Procedure with Respect to Applications and Other Matters.'' [174] The Commission is submitting these collections of information to the OMB for review in accordance with 44 U.S.C. 3507 (d) and 5 CFR 1320.11. 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 new rules are designed to expedite the review process of routine applications. We discuss below the mandatory collection of information burdens associated with the amendments to rules 0–5(e) and 0–5(g).[175]

A. Burden of Information Collection

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 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.

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 140 applications per year under the Act, and of the 140 applications, we estimate that we will receive approximately 50 applications [176] seeking expedited review under the Act.[177] 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 applicant.

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

The new mandatory requirements under rule 0–5(e) would increase the estimated hour or cost burden for applicants utilizing in-house counsel by 7 hours [178] or $2,744 [179] per application. Therefore, the new mandatory requirements under rule 0–5(e) would increase the total estimated annual hour burden by approximately 70 hours utilizing in-house counsel.[180] The total estimated annual cost burden for

[173] 44 U.S.C. 3501 through 3521.

[174] The collection of information burden within the meaning of the PRA for the general requirements of applications is under rule 0–2.

[175] Responses to this collection of information will not be kept confidential.

[176] This estimate takes into account the recent codification of certain ETF Exemptive Orders. *See supra* footnote 24.

[177] Like section III above, this section only relates to applications seeking expedited review.

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

[179] This estimate is based on the following calculation:

5 (estimated hours per application to prepare the marked copies) × $392 (hourly rate for an in-house counsel) = $1,960.

2 (estimated hours per application to explain, notate, and certify) × $392 (hourly rate for an in-house counsel) = $784.

$1,960 (estimated cost per application to prepare the marked copies) + $784 (estimated cost per application to explain, notate, and certify) = $2,744.

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 $392 per hour.

[180] This estimate is based on the following calculations:

[5 (estimated hours per application to prepare the marked copies) + 2 (estimated hour per application to explain, notate, and certify)] × 50 (estimated number of applications under expedited review) × 0.20 (approximate percentage of applications prepared by in-house counsel) = 70.

utilizing in-house counsel would be $27,440.[181]

Rule 0–5(g) would provide 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), would require applicants to respond ''in writing'' and therefore create an additional cost within the meaning of the PRA.

We estimate that we will receive approximately 90 applications[182] per year seeking standard review under the Act and of the 90 applications, we estimate that approximately 10 percent will result in applicants responding ''in writing'' to avoid the application's deemed withdrawal pursuant to rule 0–5(g). We believe the ''in writing'' requirement under rule 0–5(g) would increase the burden for applicants utilizing in-house counsel by 2 hours or $784 per application.[183] Therefore, the ''in writing'' requirement under rule 0–5(g) would increase the total estimated annual hour burden by approximately 3.6 hours utilizing in-house counsel.[184] The total estimated annual cost burden utilizing in-house counsel would be $1,411.20.[185]

B. Cost to Respondents

As discussed above, much of the work of preparing an application is performed by outside counsel. Based on conversations with applicants and Staff experience, approximately 80 percent of applications are prepared by outside counsel.

Therefore, the new mandatory requirements under rule 0–5(e) would increase the estimated cost and administrative burdens for applicants utilizing outside counsel by $3,479[186] per application and the total estimated annual cost burden by approximately $139,160 utilizing outside counsel.[187]

We believe the ''in writing'' requirement would increase the burden by $994 per application for applicants relying on outside counsel.[188] Therefore, the ''in writing'' requirement under rule 0–5(g) would increase the total estimated annual cost burden by approximately $7,157 utilizing outside counsel.[189]

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.

The following table summarizes the estimated effects and external costs of the paperwork burden associated with the amendments to rules 0–5(e) and 0–5(g).

PRA Table 1—Estimated Paperwork Burden Increase and Total Costs of the Amendments

	Number of annual responses	Burden hours per response	Annual burden costs
Rule 0–5(e)	50[1]	7	[2]$166,660
Rule 0–5(g)	9[3]	2	[4]8,568
Totals	59	9	175,168

[1] This estimate is based on the following calculations: [50 (estimated number of applications under expedited review) × 0.80 (approximate percentage of applications prepared by outside counsel)] + [50 (estimated number of applications under expedited review) × 0.20 (approximate percentage of applications prepared by in-house counsel)] = 50.

[2] $166,600 = $139,160 (estimated cost of utilizing outside counsel) + $27,440 (estimated cost of utilizing in-house counsel).

[3] This estimate is based on the following calculations: [90 (estimated number of applications under standard review) × 0.10 (approximate percentage of applications required to respond ''in writing'') × 0.80 (approximate percentage of applications prepared by outside counsel)] + [90 (estimated number of applications under standard review) × 0.10 (approximate percentage of applications required to respond ''in writing'') × 0.20 (approximate percentage of applications prepared by in-house counsel)] = 9.

[4] $8,568 = $7,157 (estimated cost of utilizing outside counsel) + $1,411 (estimated cost of utilizing in-house counsel).

V. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 3 of the Regulatory Flexibility Act (''RFA'')[190] regarding our amendments to rule 0–5 and new rule 17 CFR 202.13.

A. Reasons for and Objectives of the Actions

The application process under the Act has become more important as the

[181] This estimate is based on the following calculation: 70 (estimated total hours utilizing in-house counsel) × $392 (hourly rate for an in-house counsel) = $27,440.

[182] This estimate is based on the following calculation: 140 (estimated number of all applications) − 50 (estimated number of applications under expedited review) = 90.

[183] This estimate is based on the following calculation: 2 (estimated hours to prepare ''in writing'' response) × $392 (hourly rate for an in-house counsel) = $784.

[184] This estimate is based on the following calculations:

2 (estimated hours to prepare ''in writing'' response) × 90 (estimated number of applications under standard review) × 0.10 (approximate percentage of applications required to respond ''in writing'') × 0.20 (approximate percentage of applications prepared by in-house counsel) = 3.6.

[185] This estimate is based on the following calculation: 3.6 (estimated total hours utilizing in-house counsel) × $392 (hourly rate for an in-house counsel) = $1,411.20.

[186] This estimate is based on the following calculation:

5 (estimated hours to prepare the marked copies) × $497 (hourly rate for an attorney) = $2,485.

2 (estimated hours per application to explain, notate, and certify) × $497 (hourly rate for an attorney) = $994.

$2,485 (estimated cost per application to prepare the marked copies) + $994 (estimated cost per application to explain, notate, and certify) = $3,479.

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 outside counsel is $497 per hour.

[187] This estimate is based on the following calculations:

[$2,485 (estimated cost per application to prepare the marked copies) + $994 (estimated cost per application to explain, notate, and certify] × 50 (estimated number of applications under expedited review) × 0.80 (approximate percentage of applications prepared by outside counsel) = $139,160.

[188] This estimate is based on the following calculation: 2 (estimated hours to prepare ''in writing'' response) × $497 (hourly rate for outside counsel) = $994.

[189] This estimate is based on the following calculations:

$994 (estimated cost per application to prepare ''in writing'' response) × 90 (estimated number of applications under standard review) × 0.10 (approximate percentage of applications required to respond ''in writing'') × 0.80 (approximate percentage of applications prepared by outside counsel) = $7,157.

[190] *See* 5 U.S.C. 603.

industry has grown and diversified. Granting appropriate exemptions from the Act can provide important economic benefits to funds and their shareholders, and foster financial innovation. Thus, we have continued to consider ways to improve the applications process as we recognize the importance of obtaining an order in a timely manner. The new amendments and new rule reflect our efforts to improve the process and establish an expedited review procedure for applications that are substantially identical to recent precedent. We believe that the new approach balances applicants' desire for a prompt decision on their application with the Commission's need for adequate time to consider requests for relief.

We believe that the new procedure would encourage applicants for expedited review to submit applications that are substantially identical to precedent, which we expect would facilitate Staff review. Accordingly, we should be able to grant relief that meets the applicable standards more quickly, and, in turn, devote additional resources to the review of more novel requests. A faster application process would allow the benefits of relief to be realized by applicants, and ultimately by fund shareholders, more quickly than otherwise would be the case. Further, we expect that the new expedited review procedure will make the applications process less expensive for applicants, because we believe that it will reduce the numbers of Staff comments.

B. Legal Basis

The Commission is adopting the rules contained in this document under the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)].

C. Small Entities Subject to the Amendment

Any registered investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[191] Staff estimates that, as of June 2019, there were 50 open-end funds (including 8 ETFs), 33 closed-end funds, and 16 business development companies (BDCs) that would be considered small entities that may be subject to amendments to rule 0–5.[192]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 0–5(e) will require applicants seeking expedited review of an application to file with the Commission: (1) A cover page of the application that states prominently, ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)''; (2) exhibits with marked copies of the application showing changes from the final versions of two precedent applications identified as substantially identical; and (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 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.[193] As discussed in section IV, the estimated cost and administrative burdens for small entities associated with these activities for applicants utilizing outside counsel would be $3,479 [194] per application and the estimated hour or cost burden for applicants utilizing in-house counsel would be 7 hours [195] or $2,744 [196] per application.

As discussed in section III, we believe the additional costs and administrative burdens of providing the required statements and certifications on the included cover page and submitting two marked copies against two precedents would not have a substantial impact on the total cost for applications that qualify for the expedited review procedure. Small entities will benefit considerably from the expedited review procedure as the total estimated savings significantly justify the estimated added burden under rule 0–5(e). The estimated savings for an application under expedited review compared to an average application under the standard review process would be approximately $59,640 [197] per application utilizing outside counsel or 120 hours [198] or $47,040 [199] per application utilizing in-house counsel.

Rule 0–5(g) will require applicants to respond ''in writing'' to a request for clarification or modification of an application filed under standard review within 120 days after the request from the Staff or the application will be deemed withdrawn. As discussed in section IV, the estimated cost and administrative burdens for small entities associated with these activities for applicants utilizing outside counsel would be $994 [200] per application and the estimated hour or cost burden for applicants utilizing in-house counsel would be 2 hours or $784 [201] per application. Rule 0–5(g) imposes additional costs and administrative burdens on small entities for standard review applications, but the estimated savings from the expedited review process justify the added burden of rule 0–5(g).

In addition, compliance with the new amendments may require the use of professional legal skills necessary for research and preparation of required documents. We discuss the economic impact, including the estimated costs and burdens, of the new amendments to all registrants, including small entities, in sections III and IV above.

We believe there are no reporting, recordkeeping, or other compliance requirements for small entities with respect to rule 17 CFR 202.13. The new rule is an internal set of deadlines with no costs and administrative burdens incurred by the applicants.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no duplicative, overlapping or conflicting Federal rules to the amendments to rule 0–5 and rule 17 CFR 202.13.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that

[191] *See* 17 CFR 240.0–10 (rule 0–10(a)). Recognizing the growth in investment company assets under management since rule 0–10 was adopted, the Commission plans to revisit the definition of a small investment company for purposes of rule 0–10.

[192] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data reported on Form N–SAR filed with the Commission for the period ending June 2019.

[193] The amendments are discussed in detail in section II.A above. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in section III and section IV.

[194] This estimate is based on the following calculation: $2,485 (estimated cost per application to prepare the marked copies) + $994 (estimated cost per application to explain, notate, and certify) = $3,479.

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

[196] This estimate is based on the following calculation: $1,960 (estimated cost per application to prepare the marked copies) + $784 (estimated cost per application to explain, notate, and certify) = $2,744.

[197] *See supra* footnote 148.

[198] *See supra* footnote 149.

[199] *See supra* footnote 150.

[200] *See supra* footnote 188.

[201] *See supra* footnote 183.

would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the adoption, we considered the following alternatives: (i) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

We do not believe that establishing different compliance or reporting requirements for small entities would permit us to achieve our stated goals. We believe that the new approach is expected to reduce costs by shortening the time it takes for applicants to obtain orders on certain routine applications. Further clarification, consolidation, or simplification of the compliance and reporting requirements is not necessary to achieve the goals of the rule and would not be appropriate in the public interest and consistent with the protection of investors. The use of performance rather than design standards is not appropriate, as the new approach is intended to expedite the applications process and the use of a single design standard would make the procedure more efficient. Exemption from coverage of the rule would not be necessary, as the new expedited process would further benefit small entities by making the applications process more cost efficient.

VI. Statutory Authority

The Commission is adopting the rules contained in this document under the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)].

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Part 270

Investment Companies, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The general authority citation for part 200, subpart A, continues to read as follows:

Authority: 15 U.S.C. 77c, 77o, 77s, 77z–3, 77sss, 78d, 78d–1, 78d–2, 78o–4, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Amend § 200.30–5 by adding paragraph (a)(9) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(a) * * *

(9) To notify an applicant under 17 CFR 270.0–5(f)(1)(ii) that an application pursuant to the Act (15 U.S.C. 80a–1 *et seq.*) is not eligible for expedited review under 17 CFR 270.0–5.

* * * * *

PART 202—INFORMAL AND OTHER PROCEDURES

■ 3. The general authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d–1, 78u, 78w, 78*ll*(d), 80a–37, 80a–41, 80b–9, 80b–11, 7201 *et seq.,* unless otherwise noted.

* * * * *

■ 4. Add § 202.13 to read as follows:

§ 202.13 Informal procedure with respect to applications under the Investment Company Act of 1940.

(a) On any application subject to 17 CFR 270.0–5, other than an application eligible for and proceeding under expedited review as provided for by 17 CFR 270.0–5(d), (e), and (f), the Division should take action within 90 days of the initial filing and each of the first three amendments thereto, and within 60 days of any subsequent amendment. Such 90- or 60-day period will stop running upon any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in Federal appropriations, national emergency, inclement weather, or ad hoc Federal holiday, and will resume upon the reopening of the Commission's Washington, DC office to the public for normal business. The Division may grant 60-day extensions and the applicant should be notified of any such extension.

(b) Action on the application or any amendment thereto shall consist of:

(1) Issuing a notice;

(2) Providing the applicant with requests for clarification or modification of the application; or

(3) Informing applicant that the application will be forwarded to the Commission, in which case the application is no longer subject to the provisions set forth in paragraph (a) of this section.

(c) The provisions of this section, including the timeframes provided for in this section, are not intended to create enforceable rights by any interested parties and shall not be deemed to do so. Rather, this section provides informal non-binding guidelines and procedures that the Commission anticipates the Division following.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 5. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 6. Amend § 270.0–5 by adding paragraphs (d) through (g) to read as follows:

§ 270.0–5 Procedure with respect to applications and other matters.

* * * * *

(d)(1) An applicant may request expedited review of an application if such application is substantially identical to two other applications for which an order granting the requested relief has been issued within three years of the date of the application's initial filing.

(2) For purposes of this section, ''substantially identical'' applications are applications requesting relief from the same sections of the Act and this part, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested.

(e) An application submitted for expedited review must include:

(1) A notation on the cover page of the application that states prominently, ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)'';

(2) Exhibits with marked copies of the application showing changes from the final versions of the two applications identified as substantially identical

under paragraph (e)(3) of this section; and

(3) 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 the applicant believes the application meets the requirements of paragraph (d) of this section and that the marked copies required by paragraph (e)(2) of this section are complete and accurate.

(f)(1) No later than 45 days from the date of filing of an application for which expedited review is requested:

(i) Notice of an application will be issued in accordance with paragraph (a) of this section; or

(ii) The applicant will be notified that the application is not eligible for expedited review because it does not meet the criteria set forth in paragraph (d) or (e) of this section or because additional time is necessary for appropriate consideration of the application.

(2) For purposes of paragraph (f)(1) of this section:

(i) The 45-day period will stop running upon:

(A) Any request for modification of an application and will resume running on the 14th day after the applicant has filed an amended application responsive to such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate;

(B) Any unsolicited amendment of the application and will resume running on the 30th day after such an amendment, provided that the amendment includes a marked copy showing changes made and a certification signed by the person executing the application that such marked copy is complete and accurate; and

(C) Any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in Federal appropriations, national emergency, inclement weather, or ad hoc Federal holiday, and will resume upon the reopening of the Commission's Washington, DC office to the public for normal business.

(ii) If the applicant does not file an amendment responsive to any request for modification within 30 days of receiving such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate, the application will be deemed withdrawn.

(g) If an applicant has not responded in writing to any request for clarification or modification of an application filed under this section, other than an application that is under expedited review under paragraphs (d) and (e) of this section, within 120 days after the request, the application will be deemed withdrawn.

By the Commission.

Dated: July 6, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–14884 Filed 9–14–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Transportation Security Administration

49 CFR Chapter XII

Notification of Termination of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within Certain Countries

AGENCY: U.S. Customs and Border Protection and U.S. Transportation Security Administration, Department of Homeland Security.

ACTION: Notification of termination of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of the Department of Homeland Security (DHS) to terminate arrival restrictions applicable to certain flights. Specifically, this document terminates arrival restrictions that are applicable to flights carrying persons who had recently traveled from, or were otherwise present within, the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau); the Islamic Republic of Iran; the countries of the Schengen Area; the United Kingdom, excluding overseas territories outside of Europe; the Republic of Ireland; or the Federative Republic of Brazil. These arrival restrictions direct such flights to only land at a limited set of U.S. airports where the U.S. Government (USG) had focused public health resources conducting enhanced entry screening. Other measures to protect public health will remain in place.

DATES: The arrival restrictions described in this document are terminated as of 12:01 a.m. Eastern Daylight Time (EDT) on September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Matthew S. Davies, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–325–2073.

SUPPLEMENTARY INFORMATION:

Background

In recent months, in response to the Coronavirus Disease 2019 (COVID–19) outbreak, DHS announced a series of arrival restrictions, as follows:

- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People's Republic of China, 85 FR 6044 (Feb. 4, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People's Republic of China, 85 FR 7214 (Feb. 7, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People's Republic of China or the Islamic Republic of Iran, 85 FR 12731 (Mar. 4, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Countries of the Schengen Area, 85 FR 15059 (Mar. 17, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the United Kingdom or the Republic of Ireland, 85 FR 15714 (Mar. 19, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Federative Republic of Brazil, 85 FR 31957 (May 28, 2020).

The Secretary announced such arrival restrictions consistent with 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105.

The Secretary has decided to terminate these arrival restrictions. These restrictions funnel eligible arriving air passengers to one of 15 designated airports of entry where the USG has focused public health resources in order to conduct enhanced entry screening. Terminating this effort