responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus SAS: Docket No. FAA–2019–0858; Product Identifier 2019–NM–145–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0203, dated August 20, 2019 (''EASA AD 2019–0203'').

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by a determination through testing that ram air turbine (RAT) performance may be below the expected (certificated) level when the landing gear is extended. The FAA is issuing this AD to address this condition, which, if not corrected, could lead to partial or total loss of RAT electrical power generation when the RAT is deployed in an emergency situation, possibly resulting in reduced control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0203.

(h) Exceptions to EASA AD 2019–0203

(1) Where EASA AD 2019–0203 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0203 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC*): For any service information referenced in EASA AD 2019–0203 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0203, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0858.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

Issued in Des Moines, Washington, on October 22, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23579 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202 and 270

[Release No. IC–33658; 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: Proposed rule amendment.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is proposing amending rule 0–5 under the Investment Company Act of 1940 (''Act'') to establish an expedited review procedure for applications that are substantially identical to recent precedent as well as a new rule to establish an internal timeframe for review of applications outside of such expedited procedure. In addition, the Commission is proposing amending rule 0–5 under the Act to deem an application outside of expedited review withdrawn when the applicant does not respond in writing to comments within 120 days.

DATES: Comments should be submitted on or before November 29, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. S7–19–19 on the subject line.

Paper Comments

• Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–19–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

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 proposing an amendment to 17 CFR 270.05 (rule 0–5) under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] (''Act'') and new rule 17 CFR 202.13.

Table of Contents

I. Background

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.[1] 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.[2]

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.[3] 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).'' [4]

The Commission regularly receives applications seeking orders for exemptions or other relief under the Act.[5] 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.[6] 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 period, and does not otherwise order a hearing on an application, the Commission subsequently issues an order granting the requested relief.[7]

The staff of the Division of Investment Management (''Staff'' or ''Division'') reviews the applications that the

[1] *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.

[2] *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, a principal drafter of the Act, 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, and also a principal drafter of the Act, 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.'').

[3] 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.

[4] 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), –(12)(d)(1)(J), and –17(b)).

[5] In fiscal year 2018, approximately 134 initial applications were filed under the Act on EDGAR Form Type 40–APP.

[6] 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.

[7] 15 U.S.C. 80a–39; 17 CFR 270.0–5. In fiscal year 2018, the Commission issued 110 exemptive orders under the Act.

Commission receives under the Act.[8] 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.[9] 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.[10] 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 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.[11] 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.[12] 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.[13] For example, over the past 27 years exchange-traded funds (''ETFs'') have originated and developed through the applications process.[14] 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.[15] ETFs registered under the Act now have approximately $3.32 trillion in total net assets, and account for approximately 16% of total net assets managed by investment companies.[16]

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.

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.[17] 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.[18] In response, in 1993, the Commission proposed amendments to rule 0–5 under the Act to establish an expedited review procedure for certain routine applications.[19] The Commission, however, did not adopt these proposed amendments.

In subsequent years, initiatives aimed at improving the application process have continued. For example, in 2008, the Staff implemented an internal performance target of providing initial comments on at least 80% of applications within 120 days after their receipt.[20] 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% of exemptive applications.[21] By 2010, the Division met this target on 100% of exemptive applications, and has not dropped

[8] 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). Consistent with the Commission's statement, the Staff currently only reviews draft applications in very limited circumstances.

[9] The Staff may place an application on inactive status when an applicant does not respond to comments within 60 days. Such inactive status is for internal tracking purposes only and has no effects on the application process. An applicant may ''reactivate'' an application at any time by filing an amended application or otherwise responding to the comments.

[10] 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. 17 CFR 200.30–5(a)(2) generally delegates the power to authorize the issuance of orders where 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 and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and 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.

[11] *See infra* note 23.

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

[13] For example, money market funds needed 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 rule 2a–7 under the Act to allow money market funds to operate without individual exemptive orders. 17 CFR 270.2a–7.

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

[15] *See id.*

[16] *See id.* at 6.

[17] 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'').

[18] *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.

[19] *See* Expedited Procedure for Exemptive Orders and Expanded Delegated Authority, Investment Company Act Release No. 19362 (March 26, 1993). The proposal sought to implement the Staff's recommendations from the *Protecting Investors* report by proposing amending 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.)

[20] 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. See also, Remarks Before the ICI 2007 Securities Law Developments Conference by Andrew J. Donohue, Director, Division of Investment Management, *https://www.sec.gov/news/speech/2007/spch120607ajd.htm*. In 2006, the Commission's Inspector General found that the exemptive 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), September 29, 2006.

[21] *Id.*

below 99% each year since.[22] 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. 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 a timely manner. This proposal is 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 exemptive rules that would replace lines of routine applications.[23] These rules would benefit the application process by making the corresponding applications no longer necessary, which, in turn, would allow 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 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.

With respect to routine applications, because the Staff has already performed the overall legal and policy analysis underlying the requested relief, the Staff generally should be able to review these applications much more quickly. Sometimes, however, that is not the case. In particular, routine applications for which there is clear precedent nonetheless often 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 the relief or the terms and conditions associated with the relief, or consider whether the relief can appropriately be granted to a specific applicant.[24]

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 Proposed Commission Action

Our proposal seeks to make the application process more efficient.[25] In addition, we also are proposing actions to provide additional certainty and transparency in the application process. Specifically, we are proposing an expedited review process for routine applications, a new informal internal procedure for applications that would not qualify for the new expedited process, and a new rule to deem an application withdrawn when an applicant does not respond in writing to Staff comments within 120 days. In addition, we are announcing plans to begin to disseminate Staff comments publicly on applications as well as responses to those comments.

A. Expedited Review Procedure

In order to expedite the review of routine applications, the Commission is proposing amendments to rule 0–5 under the Act, which sets forth the procedure for applications under the Act. These amendments would establish an expedited review procedure for applications that are substantially identical to recent precedent. We believe that the proposed 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 should encourage applicants for expedited review to submit applications substantially identical to precedent, which would then 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.[26] A more efficient application process would allow applicants to realize the benefits of relief more quickly than otherwise would be the case; and fund shareholders would generally share in these benefits.[27] Further, we believe that the proposed expedited review procedure would make the applications process less expensive for applicants, because we anticipate that it would reduce the number of Staff comments that would require a response and enable applicants to have more certainty

[22] *See* Fiscal Year 2019, Congressional Budget Justification Annual Performance Plan, Fiscal Year 2017, Annual Performance Report, at 99. *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. In fiscal year 2018, the Division provided comments within 120 days on 100% of exemptive application amendments.

[23] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) and Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) (proposed rule). Prior examples of the Commission's adopting rules replacing lines of routine applications, among others, include: in 1992, adopting 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)]); in 1999, amending rule 15a-4 addressing 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 in 2002, adopting rule 17a–8 addressing mergers of affiliated investment companies (Investment Company Mergers, Investment Company Act Release No. 25666 (Jul. 18, 2002) [67 FR 48511 (Jul. 24, 2002)]). *See also* note 13 above and SEC Inspector General Report IM Exemptive Application Processing (Audit No. 408), September 29, 2006, at 4.

[24] 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.

[25] Our proposed 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 that they are less likely to qualify for an expedited review process like the one we are proposing 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* note 31 and accompanying text.

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

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

regarding the timing of application processing.

1. Eligibility for Expedited Review

Proposed new 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 two years of the date of the application's initial filing. Rule 0–5(d)(2) defines ''substantially identical'' applications as those requesting relief from the same sections of the Act and rules thereunder, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested.[28] 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.[29] The ''substantially identical'' requirement would 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.[30] In addition, the requirement would help to ensure that applicants submit applications that include language that is substantially identical to the language of the precedent applications, which would facilitate Staff review. The two-year requirement is designed to help ensure that the precedent is 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 application are still appropriate.

Certain kinds of applications appear highly unlikely to be suitable for expedited review. These would include, for example, applications filed under sections 2(a)(9), 3(b)(2), 6(b), 9(c), and 26(c) of the Act.[31] These types of applications are generally too fact-specific for applicants to be able to meet the substantially identical standard.[32]

We request comment generally on these proposed eligibility provisions and specifically on the following issues:

- Do these requirements strike the appropriate balance between permitting applicants to seek the relief they need and facilitating the Staff's prompt review of routine applications?
- Is the ''substantially identical'' standard appropriate? Does it effectively limit the applications eligible for expedited review to routine applications that the Staff can review in an expedited manner?
- Is the two-year standard appropriate? Does it effectively limit precedents to recent applications where it is unlikely that the Staff's review of whether the terms and conditions of an application are still appropriate would take a significant amount of time? Should the two-year period be longer? There are lines of applications that may be routine, but may not have as frequent filings currently as other lines (*e.g.,* applications permitting the allocation of certain expenses of a fund of funds to affiliated underlying funds),[33] and therefore may not meet the two-year requirement. Would the two-year requirement inappropriately exclude such applications from the proposed expedited review process?
- Is the view that applications under sections 2(a)(9), 3(b)(2), 6(b), 9(c), and 26(c) of the Act appear unlikely to be suitable for the expedited review procedure appropriate? Should rule 0–5 explicitly exclude such applications from expedited review? Are there other applications that would be unsuitable for the expedited review process?
- Are there applications filed under provisions other than rule 0–5 that should be included in the expedited review process?

2. Additional Information Required for Expedited Review

Applicants seeking expedited review will need to include certain information with the application under proposed rule 0–5(e). Proposed 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 proposed requirement would assist the Staff in clearly identifying and effectively processing the request for expedited review. Proposed 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 would help the Staff to readily discern any variations between the application seeking expedited review and the precedential applications. Proposed 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; 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.[34] We seek comment generally on this proposal regarding additional information required for expedited review and specifically on the following issues:

- Is the requirement that the application include marked copies showing changes from final versions of the precedent applications appropriate? Would this requirement be

[28] Factual differences not material to the relief requested might include, depending on the facts and circumstances, the applicants' identities, the state of incorporation of a fund, or the constitution of the fund's board of directors.

[29] Because applications must be substantially identical, applicants would not be able to ''mix and match'' relief under the proposed rule. In other words, applications for expedited review would not be able to combine portions or sections of different prior applications.

[30] 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 it raises such an issue. *See supra* Section I.C.

[31] *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 (Sep. 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 (Sep. 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 (Sep. 11, 2018) (Order) (fund substitution, section 26(c) application).

[32] Other lines of applications, such as co-investment applications, would also usually not meet the standard for expedited review. Co-investment applications generally seek relief to permit a business development company and certain closed-end management investment companies to co-invest in portfolio companies with each other and with other affiliated funds. *See www.sec.gov/rules/icreleases.shtml#coinvestment.* Co-investment applications typically include different terms and conditions than those of precedent applications.

[33] *See https://www.sec.gov/rules/icreleases.shtml#jointtrans.*

[34] 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 rule 0–5(f)(1)(ii). For a marked copy to be accurate, it would need to, among other things, reflect the applications used to make the comparison as filed on EDGAR.

unnecessarily burdensome for applicants?

• Is the requirement that the applicant include a cover letter identifying precedent and certifying that the requirements of rule 0–5(d) are met appropriate? In particular, is it appropriate to require a ''certification'' for the substantially identical standard, considering that some discretion may be involved in the determination of whether two applications are substantially identical? Should we modify the certification requirement accordingly? Is the requirement of a certification as to the completeness and accuracy of the marked copies of precedent appropriate? How might the certification requirement add to the cost of an application? Is there an alternative mechanism that could help ensure that applicants make correct use of the expedited review process?

3. Expedited Review Timeframe

Under proposed rule 0–5(f), a notice for an application submitted for expedited review would be issued no later than 45 days from the date of filing [35] unless the applicant is notified that (i) the application is not eligible for expedited review because it does not meet the criteria in rule 0–5(d), or (ii) further consideration of the application is necessary for appropriate consideration of the application. We are proposing 45 days as the timeframe for expedited review, based on the Division's experience considering and acting on routine applications.

While we anticipate that the notice for an application meeting proposed rule 0–5(d)'s criteria would typically be issued within the 45-day timeline, there may be situations where further consideration is necessary for appropriate consideration of the application. 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.[36] 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 would ask the applicant to either withdraw the application or amend it to make changes so that the application could proceed outside of the expedited review process.

We request comment generally on this proposed timeframe for expedited review and specifically on the following issues:

• Does the proposed 45-day time period strike the right balance between facilitating a prompt review and allowing Staff to appropriately review an application? Should the time period be shorter? Should the time period be longer?

• Are the grounds for ineligibility for expedited review appropriate? Should there be additional, or different, grounds for ineligibility? Is the ''necessary for appropriate consideration of the application'' standard for ineligibility appropriate? Should we replace, delete, or modify it?

Certain conditions would govern the operation of the 45-day time period. In particular, the 45-day period would restart upon the filing of any amendment that the Commission or Staff did not solicit. The Staff would need additional time to review the change or changes made in such an amendment. Notwithstanding this provision, however, the Staff may act before the end of the additional 45-day period, if the unsolicited amendment relates only to factual differences not material to the relief requested or to some other minor change.

In addition, any comment on the application by the Staff would pause the 45-day period. Although the Commission anticipates that the Staff would issue few 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.[37] There may also be times when a non-material 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 proposal provides that the 45-day period would pause upon such a request by the Staff and would resume 14 days after the filing of an amended application that is responsive to such request. The Staff would need the additional time to review the amended application and determine whether a notice can be issued under rule 0–5(f)(1)(i). Based on the Division's experience regarding amendments to routine applications, we propose 14 days as the appropriate amount of time for the Staff to make this determination.

Additionally, the proposed 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.

The proposed rule would further provide 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. This withdrawal would be without prejudice. In the rule we are proposing here, we would be committing to processing routine applications promptly. We believe that for applicants to benefit from the expedited processing, they should also act expeditiously.[38]

• We request comment generally on the proposed amendment procedure for applications requesting expedited review and specifically on the following issues: Is it appropriate to restart the 45-day time period upon filing of an unsolicited amendment? Should the 45-day period pause for a shorter number of days instead? Would the provision for restarting the 45-day period have a chilling effect on applicants wishing to submit unsolicited amendments?

• Is the pause mechanism appropriate for processing amendments submitted in response to comments? Is the 14 days allowed for resuming the 45-day period following submission of a responsive amendment appropriate? Is 14 days too long? Too short?

• Is it appropriate to deem withdrawn any application submitted for expedited review for which applicants have not

[35] Notice of the application, followed by an order disposing of the matter, would be issued under current rule 0–5(a) and (b).

[36] 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.

[37] In cases where an application is not substantially identical to precedent, the Staff would 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 would run smoothly over time.

[38] An applicant taking longer than 30 days to respond to Staff comments may suggest that the application is not appropriate for expedited review.

filed an amendment responsive to the Staff comments within 30 days?

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

In addition to a new expedited review process, the Commission is also proposing a new rule to provide a timeframe for all other applications filed under rule 0–5. We believe that the proposed rule 17 CFR 202.13 would 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,[39] the rule should result in a more transparent timeline, including the time at which the Staff would forward an application to the Commission.

Under the proposed rule, the Staff should take action on the application within 90 days of the initial filing and amendments thereto.[40] In addition, the Staff may grant 90-day extensions, and applicants should be notified of any such extension.[41]

For the purposes of the proposed rule, action on an application or amendment would consist 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. 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 give applicants the opportunity to withdraw the application before such recommendation is made.[42]

We request comment generally on the procedures for ''standard review'' of applications and specifically on the following issues:

- Is the 90-day period for taking action on applications appropriate? Is this period too long? Too short?
- Are 90-day extension periods appropriate? Are they too long? Too short?
- Is the Commission's specification of potential actions on an application appropriate? Does the proposal adequately cover actions on applications that may be taken?

C. Applications Deemed Withdrawn Under the Standard Review Process

The Commission is also proposing to amend 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.

Proposed 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 this section within 120 days after the request, the application will be deemed withdrawn.[43] The withdrawal would be without prejudice and the applicant would be free to refile.

We request comment generally on our proposal regarding deeming applications withdrawn and specifically on the following issues:

- Is the 120-day period appropriate for deeming an application withdrawn? Should it be longer? Shorter?

D. Release of Comments on Applications and Responses

Finally, to improve the transparency of the applications process, we intend to begin to publicly disseminate Staff comments on applications, and responses to those comments, no later than 120 days after the final disposition of an application.[44] These procedures would be the same for both standard and expedited review of applications.

The Staff provides applicants with comments on an application, for example, where it believes that the current application does not meet the standard for granting an exemption.[45] Currently, the Staff releases comments on applications, and responses to those comments only in response to Freedom of Information Act (''FOIA'') requests. We believe it is appropriate to expand the transparency of the applications process, so that the public can benefit from greater transparency into the applications process without the delay or burden of submitting FOIA requests. We intend to do this through the Commission's EDGAR Public Dissemination Service and on our website at *www.sec.gov* following a process similar to the process that the Division of Investment Management and the Division of Corporation Finance use to publicly disseminate comment letters and responses on disclosure filings.[46] Applicants and the Staff would file comments and responses to comments on a non-public basis on EDGAR during the review process.[47] Upon final disposition of an application, the Staff would disseminate such filings through EDGAR to make them publicly available, except for materials (or portions thereof) covered by confidential treatment requests.[48] We anticipate that we would make these materials publicly available no later than 120 days after final disposition of the application.

We plan to announce in any subsequent adopting release a specific date for effectiveness of this new approach; that date will depend on completion of necessary technical modifications.

We invite comments on the approach we intend to take, and specifically on the following issues:

- Is the public dissemination of Staff comments to applications, and responses thereto (subject to confidentiality requests) in the public interest? Would this dissemination potentially lead to competitive harm affecting applicants? Would it create undesirable incentives regarding the use of the process for making confidential treatment requests?
- What types of information that applicants currently disclose in

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

[40] As with the expedited review process, the 90 day period would also pause upon any irregular closure of the Commission's Washington, DC office to the public for normal business.

[41] The provisions of this rule, including the time frames 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 and procedures that the Commission anticipates the Division following.

[42] *See supra* note 6.

[43] An application requesting expedited review would not be subject to this withdrawal provision because under proposed rule 0–5(f)(2)(iii), it would 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 would reflect that an application is deemed withdrawn under proposed rule 0–5(g) by uploading a form APP–WDG on EDGAR, without need for any action by the applicant.

[44] ''Final disposition'' means that the Commission has issued an order granting or denying the requested relief or that the application has been withdrawn.

[45] *See supra* Section I.A. These comments set forth Staff views on a particular filing only and do not constitute an official expression of the Commission's views.

[46] The announcement regarding public release of comment letters and responses may be found at *https://www.sec.gov/news/press/2004-89.htm.*

[47] Applicants have to file the response to comment letters and any other correspondences on EDGAR using the CORRESP file type to conform to EDGAR requirements in making the materials publicly available.

[48] *See* Commission rule 83 (17 CFR 200.83).

comments, if any, would applicants potentially request be kept confidential? How common is such information included in written comments? Do applicants anticipate they would request confidential treatment frequently?

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 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 the proposed amendment to rule 0–5, including the benefits and costs to applicants and other market participants as well as the broader implications of the proposal for efficiency, competition, and capital formation.

The scope of the benefits and costs of the proposed amendment to 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 the proposed amendment to 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 2016, 2017, and 2018.[49]

Exemption Type[50]	2016	2017	2018	Total
12(d)(3)	1	0	1	2
Affiliated Sales	4	2	2	8
Business Development Companies	1	1	1	3
Co-Investment	11	20	9	40
Distributions	1	1	1	3
Employees Securities Company	2	4	0	6
Exchange Traded Funds	40	41	31	112
Family Office	2	1	2	5
Fund of Funds—Multi-Group	9	9	5	23
Inadvertent Investment Companies	0	1	2	3
Ineligible—Disqualified Firm	1	2	0	3
Insurance Products	7	4	2	13
Inter-fund Lending	12	5	1	18
Interval Funds	1	2	0	3
Joint Transaction	1	0	3	4
Multi-Class	13	11	7	31
Multi-Manager	13	15	10	38
Other	18	9	15	42
Unit Investment Trusts—Other	0	1	0	1
Total	137	129	92	358

Among the 358 applications shown in the above table, the largest broad categories of applications are applications related to exchange traded funds (112 or 31% of applications), applications related to co-investment (40, or 11% of applications), applications related to multi-managers (38, or 11% of applications), applications related to funds of funds (23, or 7% of applications), and applications related to inter-fund lending (18, or 5% of applications). Together, these broad categories of applications comprise 231, or 66% of applications from 2016 to 2018.

The table below reports the number of amended filings associated with initial applications from 2016 to 2018, for those applications that resulted in notices from 2016 to 2018.

NUMBER OF AMENDED FILINGS

0	1	2	3	4	5	Total
42	103	35	21	8	4	213

Of the 213 applications from 2016 to 2018, 42 (20%) initial applications resulted in a notice without any amendment. 103 (48%) applications resulted in a notice after one amendment to the initial application. Overall, 68 (32%) of 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 the proposed amendment to 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

[49] We use a combination of EDGAR and internal data for this baseline analysis. The table includes initial applications that were initially filed from 2016 to 2018.

[50] *See https://www.sec.gov/rules/icreleases.shtml.*

2008 the Staff adopted the performance target of providing comments on at least 80% of initial applications within 120 days after their receipt.[51] 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 2016 to 2018.

Year	Mean	% ≤45 days	% ≤90 days	% ≤120 days
2016	76	21	66	100
2017	85	24	56	96
2018	86	25	54	100
Overall	82	24	59	99

Overall, from 2016 through 2018, 24% of applicants experienced times between initial filing and a response from the Commission of 45 days, or less. 59% of applicants experienced times of 90 days, or less, and 99% of applicants experienced times of 120 days, or less.

C. Benefits and Costs of the Proposed Amendment to Rule 0–5

We are proposing 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 proposed actions could have both direct as well as indirect effects. Because the proposed actions affect the application process, the proposed actions could affect both applicants and the Commission. Further, to the extent the proposed 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 proposal 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 24% of initial applications have received Commission response within 45 days.[52] The expected benefits and costs will depend on the extent to which the proposed actions result in outcomes that differ from recent experience.[53]

1. Benefits

We expect the proposed 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 proposed expedited review procedure would make the application process less expensive. For example, we believe that the new procedure would encourage applicants for expedited review to submit applications that are substantially similar to precedent. Submitting applications that are substantially similar 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 would 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 exemptive application under standard review utilizing outside counsel is approximately $74,550[54] and the estimated hour or cost burden per application for applicants utilizing in-house counsel would be approximately 150 hours or $58,800.[55] The Staff estimates that the total cost burden per application for applicants to receive an order for an exemptive application under the proposed expedited review utilizing outside counsel is approximately $14,910[56] and the estimated hour or cost burden per application for applicants utilizing in-house counsel would be approximately 30 hours or $11,760.[57]

The estimated savings for an application under expedited review compared to an average application under the standard review process would be approximately $59,640[58] per application utilizing outside counsel or 120 hours[59] or $47,040[60] 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.[61] The total estimated annual savings for the expedited review process for both outside and in-house counsel would be $2,856,000.[62] Investors would benefit to the extent those reduced costs were passed along.

We expect that the proposed actions will also have a direct effect on the Commission. As noted previously, often the most significant factor affecting the

[51] *See supra* note 20.

[52] As discussed above, 59% of amended filings have received Commission action within 90 days.

[53] The expected benefits and costs will also depend on the amount of application activity. Recent rulemaking proposals, if adopted, could result in a reduction in the number of future applications. *See supra* note 23.

[54] 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.

[55] 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.

[56] 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.

[57] 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.

[58] 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.

[59] 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.

[60] 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.

[61] 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) × 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) × 0.20 (approximate percentage of applications prepared by in-house counsel) = 1,200.

[62] 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 take into account the incremental costs of the expedited review requirements.

time to review an application is 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 similar 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 proposed 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 proposed actions could foster the submission of a greater number of novel applications which could lead to greater innovation in investment products. Further, the proposed actions could benefit investors by enhancing competition among market participants, which we discuss in more detail below.

2. Costs

With respect to applications for expedited review, proposed 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).'' Based on conversations with applicants and Staff experience, we expect the cost of the notation to be $248.50 per application utilizing outside counsel and $196 per application utilizing in-house counsel.[63]

Proposed rule 0–5(e)(2) also requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of the two precedent applications. Based on conversations 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.[64] Applicants utilizing in-house counsel to provide two marked copies against two recent precedents would spend 5 hours or $1,960 per application.[65]

We estimate to receive approximately 50 applications[66] per year seeking expedited review under the Act. Therefore, the new mandatory requirements would impose a total estimated annual cost burden by approximately $109,340 utilizing outside counsel and total estimated annual hour burden by approximately 55 hours utilizing in-house counsel.[67] The total estimated annual cost burden for both outside and in-house counsel would be $130,900.[68]

Proposed rule 0–5(e)(3) also requires the accompanying cover letter to certify on behalf of the applicant that 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. The written certification is similar to the representation required from counsel under rule 485 for post-effective amendments filed by certain registered investment companies. Such a representation would be subject to section 34(b) of the Act.[69] We believe the costs associated with providing this certification for expedited review would be minimal.

The proposed amendment to rule 0–5 would also provide 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.[70] 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 timely manner.

Finally, proposed rule 0–5(e) creates the opportunity for applicants whose applications meet certain requirements to request expedited review. The proposed 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.

Proposed 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, proposed rule 0–5(g), would require applicants to respond ''in writing'' and therefore create an additional cost. We believe the ''in writing'' requirement would increase the burden by 2 hours or $994 per application for applicants relying on outside counsel.[71] Applicants utilizing in-house counsel would spend 2 hours or $784 per application.[72] We estimate to receive approximately 90 applications[73] seeking standard review under the Act and of the 90 applications, we estimate that in approximately 10 percent of those, the applicants would respond ''in writing'' to avoid that the application be deemed withdrawn 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 and total estimated annual hour burden by approximately 3.6 hours utilizing in-house counsel.[74] The total estimated annual cost burden for both outside and in-house counsel would be $8,568.[75]

D. Effects on Efficiency, Competition, and Capital Formation

This section evaluates the impact of proposed rule 0–5(e) on efficiency, competition, and capital formation.

Efficiency. We expect the expedited review process to benefit potential applicants directly by providing them an incentive to seek requested relief more quickly than under the existing process. Further, to the extent the proposed rule encourages applications that are substantially similar to precedent, we expect the proposed rule should reduce the likelihood of applicants needing to file amendments.

[63] *See infra* PRA Table 1.

[64] *See infra* PRA Table 1.

[65] *See infra* discussion in Section IV.A.

[66] *See infra* note 80.

[67] *See infra* note 86.

[68] *See infra* note 87.

[69] *See supra* note 34.

[70] Currently, Staff may place an application on inactive status when an applicant does not respond to comments within 60 days. *See supra* footnote 9.

[71] *See infra* note 88.

[72] *See infra* note 89.

[73] *See infra* note 90.

[74] *See infra* note 91.

[75] *See infra* note 92.

To the extent the expedited review process encourages 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, increased time and resources are required for the Staff 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 similar 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.

Competition. The proposed rule would likely increase competition in those situations where applicants would meet the requirement for expedited review. The effect on competition would 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.[76] Second, to the extent the proposed 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 proposed 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 application process to increase, allowing more investor money to be used productively. The increased efficiency could also lead to more applications. To the extent investors do not simply substitute one applicant's product for another, an increase in the number of applications could increase demand for intermediated assets as a whole and as a result, facilitate capital formation.

Also, to the extent the new procedures would encourage applicants for expedited review to submit applications that are substantially similar 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

1. Different Precedent or Timeframe Requirements

Proposed new 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 proposed 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 proposed 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, 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 similar 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 proposed rule requires the two precedent applications to have been filed within the past two years. Our decision to require precedents that have been filed over the past two 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 two years could increase the number 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 two 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 two year requirement strikes an appropriate balance between those two competing considerations.

F. Request for Comment

Throughout this release, we have discussed the anticipated benefits and costs of the proposed amendment to rule 0–5 and its potential effect on efficiency, competition, and capital formation. While we do not have comprehensive information on all aspects of the application process, we are using the data currently available in considering the effects of the proposed rule. We request comment on all aspects of this initial economic analysis, including on whether the analysis has (1) identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed new rule. We request and encourage any interested person to

[76] To the extent the proposed expedited review process would allow subsequent applicants to compete more quickly, ''first-movers'' (*i.e.,* the two initial applicants relied on as precedent) may realize some reduction in benefits from innovation. We would expect any resulting effect on innovation to be minimal. In general, we anticipate that the expected loss in benefits associated with earlier competition from subsequent applicants would be limited, and would be justified by the expected gains from innovation. As a result, we believe the proposed rule would not measurably affect innovation.

submit comments regarding the proposed rule, our analysis of the potential effects of the rules and other matters that may have an effect on the proposed rules. We request that commenters identify sources of data and information with respect to applications in general, but also with respect to routine applications in particular, as well as provide data and information to assist us in analyzing the economic consequences of the proposed rules. We are also interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. We urge commenters to be as specific as possible.

Comments on the following questions are of particular interest.

- We have characterized the costs of certain requirements of the proposal as minimal. Have we correctly characterized the cost of those requirements?
- We have characterized the cost of the requirement that the accompanying cover letter 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 as minimal. Are these costs minimal? If these costs are not minimal, what would be a more accurate characterization of these costs?

IV. Paperwork Reduction Act

The proposed rule amendments under the Act contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[77] 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.''[78] 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 proposed rules are designed to expedite the review process of routine applications. We discuss below the mandatory collection of information burdens associated with the proposed amendments to rules 0–5(e) and 0–5(g).[79]

A. Rule 0–5(e)

Proposed rule 0–5(e) requires applicants seeking expedited review to include certain information with the application. Proposed 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).'' Proposed 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. Proposed 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 (ii) certifying that that the applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate.

The Commission receives approximately 140 applications per year under the Act, and of the 140 applications, we estimate to receive approximately 50 applications[80] seeking expedited review under the Act.[81] 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.

The following table summarizes the estimated effects of the proposed amendments on the paperwork burden associated with the amendments to rule 0–5(e).

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN INCREASE OF THE PROPOSED AMENDMENTS

Proposed amendments to rule 0–5(e)	Estimated burden increase
• Utilize outside counsel to notate on the cover page stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)'' and certify that the application meets the requirements.	• 0.5 hour (0.25 hour to notate the required statement and 0.25 hour to certify). • The estimated additional cost per application would be $248.50.[1]
• Utilize in-house counsel to notate on the cover page stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)'' and certify that the application meets the requirements.	• 0.5 hour (0.25 hour to notate the required statement and 0.25 hour to certify). • The estimated additional cost per application would be $196.[2]
• Utilize outside counsel to prepare two marked copies against two recent precedents.	• 5 hours (4 hours to search for applicable precedents and 1 hour to prepare the marked copies) per application. • The estimated additional cost per application would be $2,485.[3]
• Utilize in-house counsel to prepare two marked copies against two recent precedents.	• 5 hours (4 hours to search for applicable precedents and 1 hour to prepare the marked copies) per application. • The estimated additional cost per application would be $1,960.[4]

Notes:

[1] This estimate is based on the following calculation: 0.5 (estimated hour per application to notate and to certify) × $497 (hourly rate for an attorney) = $248.50. 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.

[2] This estimate is based on the following calculation: 0.5 (estimated hour per application to notate and to certify) × $392 (hourly rate for an in-house counsel) = $196. 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.

[3] This estimate is based on the following calculation: 5 (estimated hours to prepare the marked copies) × $497 (hourly rate for an attorney) = $2,485. 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.

[77] 44 U.S.C. 3501 through 3521.

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

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

[80] This estimate takes into account the recent codification of certain ETF Exemptive Orders. *See supra* note 23.

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

[4] 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. 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.

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 and approximately 20 percent of applications are prepared by in-house counsel. Therefore, the new mandatory requirements would increase the total estimated annual cost burden by approximately $109,340 utilizing outside counsel and total estimated annual hour burden by approximately 55 hours utilizing in-house counsel.[82] The total estimated annual cost burden for both outside and in-house counsel would be $130,900.[83]

B. Rule 0–5(g)

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

Applicants would be required to submit a letter or an email in response to a request for clarification or modification of an application from the Staff. We believe the ''in writing'' requirement would increase the burden by 2 hours or $994 per application for applicants relying on outside counsel.[84] Applicants utilizing in-house counsel would spend 2 hours or $784 per application.[85] We estimate to receive approximately 90 applications [86] per year seeking standard review under the Act and of the 90 applications, we estimate that in approximately 10 percent of those, the applicants would respond ''in writing'' to avoid that the application be deemed withdrawn 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 and total estimated annual hour burden by approximately 3.6 hours utilizing in-house counsel.[87] The total estimated annual cost burden for both outside and in-house counsel would be $8,568.[88]

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the function of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Commission has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–19–19. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–19–19, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street 85 NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3 of the Regulatory Flexibility Act (''RFA'') [89] regarding our proposed amendments to rule 0–5 and new rule 17 CFR 202.13.

A. Reasons for and Objectives of the Proposed Actions

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

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

[$2,485 (estimated cost per application to prepare the marked copies) + $248.50 (estimated cost per application to notate and certify] × 50 (estimated number of applications under expedited review) × 0.80 (approximate percentage of applications prepared by outside counsel) = $109,340.

[5 (estimated hours per application to prepare the marked copies) + 0.5 (estimated hour per application to notate and certify)] × 50 (estimated number of applications under expedited review) × 0.20 (approximate percentage of applications prepared by in-house counsel) = 55.

[83] This estimate is based on the following calculation: $109,340 (estimated total cost utilizing outside counsel) + [55 (estimated total hours utilizing in-house counsel) × $392 (hourly rate for an in-house counsel)] = $130,900.

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

[85] 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.

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

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

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

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

[88] This estimate is based on the following calculation: $7,157 (estimated total cost utilizing outside counsel) + [3.6 (estimated total hours utilizing in-house counsel) × $392 (hourly rate for an in-house counsel)] = $8,568.

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

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 proposed amendments and new rule reflect our efforts to improve the process and would establish an expedited review procedure for applications that are substantially identical to recent precedent. We believe that the proposed 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 proposed expedited review procedure would make the applications process less expensive for applicants, because we believe that it would reduce the numbers of Staff comments.

B. Legal Basis

The Commission is proposing 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 Proposed 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.[90] Staff estimates that, as of December 2018, there were 59 open-end funds (including 9 ETFs), 31 closed-end funds, and 16 BDCs that would be considered small entities that may be subject to proposed amendments to rule 0–5.[91]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Proposed new 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 (ii) certifying that that the applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate.[92] 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 $2,733.50[93] per application and the estimated hour or cost burden for applicants utilizing in-house counsel would be 5.5 hours[94] or $2,156[95] 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 considerably benefit from the expedited review procedure as the total estimated savings significantly justify the estimated added burden under proposed 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[96] per application utilizing outside counsel or 120 hours[97] or $47,040[98] per application utilizing in-house counsel.

Proposed new 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[99] per application and the estimated hour or cost burden for applicants utilizing in-house counsel would be 2 hours or $784[100] per application. Proposed 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 would justify the added burden of rule 0–5(g).

In addition, compliance with the proposed amendments would 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 proposed amendments to all registrants, including small entities, in sections III and IV above.

We believe there are no reporting, recordkeeping and other compliance requirements for small entities with respect to the proposed new rule 17 CFR 202.13. The rule we propose here 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 proposed amendments to rule 0–5 and the new rule 17 CFR 202.13.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, 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

[90] *See* rule 0–10(a).

[91] 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 December 2018.

[92] 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.

[93] This estimate is based on the following calculation: $2,485 (estimated cost per application to prepare the marked copies) + $248.50 (estimated cost per application to notate and certify) = $2,733.50.

[94] This estimate is based on the following calculation: 5 hours (estimated hours per application to prepare the marked copies) + 0.5 hour (estimated hour per application to notate and certify) = 5.5 hours.

[95] This estimate is based on the following calculation: $1,960 (estimated cost per application to prepare the marked copies) + $196 (estimated cost per application to notate and certify) = $2,156.

[96] *See supra* note 58.

[97] *See supra* note 59.

[98] *See supra* note 60.

[99] *See supra* note 84.

[100] *See supra* note 85.

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 a 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 proposal 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.

G. Request for Comment

The Commission requests comments regarding this analysis. We request comment on the number of small entities that would be subject to the proposed amendments and whether the proposed amendments would have any effects on small entities that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to the proposed amendments and provide empirical data to support the nature and extent of such effects. We also request comment on the estimated compliance burdens of the proposed amendments and how they would affect small entities.

VI. Consideration of the Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[101] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Authority

The Commission is proposing 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 Parts 202

Administrative practice and procedure, Securities.

17 CFR Parts 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

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

PART 202—INFORMAL AND OTHER PROCEDURES.

■ 1. The 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.

* * * * *

■ 2. 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 or any amendment thereto. Such 90 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 90-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 rule, including the time frames provided for herein, 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 and procedures that the Commission anticipates the Division following.

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

■ 3. The 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.

* * * * *

■ 4. Section 270.0–5 is amended by adding new paragraphs (d), (e), (f), and (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 two 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 rules thereunder, 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,

[101] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

''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

(ii) Certifying that 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) 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 restart upon the filing of any unsolicited amendment.

(ii) 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; and

(B) 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.

(iii) 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) through (e) of this section, within 120 days after the request, the application will be deemed withdrawn.

By the Commission.

Dated: October 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23082 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–472]

Schedules of Controlled Substances: Placement of FUB-AMB in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the Controlled Substances Act. If finalized, this action would make permanent the existing regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle FUB-AMB.

DATES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Comments must be submitted electronically or postmarked on or before November 29, 2019. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before November 29, 2019.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–472'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

- *Hearing requests:* All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

SUPPLEMENTARY INFORMATION: