



November 27, 2019

Mr. Eduardo A. Aleman  
Deputy Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940  
**File No. S7-19-19**

Dear Mr. Aleman:

The Asset Management Group (the “**AMG**”) of the Securities Industry and Financial Markets Association (“**SIFMA**”)<sup>1</sup> appreciates the opportunity to provide comments to the United States Securities and Exchange Commission (the “**Commission**”) on the Commission’s proposed amendments to Rule 0-5 under the Investment Company Act of 1940, as amended (the “**Investment Company Act**” or the “**1940 Act**”).<sup>2</sup> AMG is generally very supportive of the Proposal, which we expect will make the exemptive application process more efficient and cost-effective for applicants, and provide additional transparency to the process. However, AMG has several suggestions that we believe will improve the Proposal without negatively impacting the goals and purposes behind the Commission’s efforts.

### **Summary of the Proposal**

The Commission’s proposed amendments to Rule 0-5 will, among other things, establish an expedited review procedure for certain 1940 Act exemptive applications and establish an internal timeframe for staff review of applications outside of the expedited procedure. The expedited review procedure for routine applications would apply where the Commission has granted substantially identical relief to two other applications for which an order granting the relief has been issued within two years of the date of the application’s initial filing. Further, notice for an application filed under expedited review would be issued no later than 45 days from the date of filing unless applicants are not qualified under the rules or if the staff believes comments are necessary. In addition, the Commission proposed a new Rule 17 C.F.R. 202.13 that would establish an internal timeframe for the Division of Investment Management’s

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<sup>1</sup> SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <http://www.sifma.org/amg>.

<sup>2</sup> See, Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940, Investment Company Act Release No. 33658 (Oct. 18, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-23082.pdf> (the “**Proposal**”).

staff (“**Staff**”) to take action on applications outside of expedited review within 90 days of the initial filing and amendments thereto. Finally, the Proposal includes plans for the Staff to publicly disseminate Staff comments on applications, and applicant responses to those comments, no later than 120 days after the final disposition of an application, similar to the current policy of Staff’s Disclosure Office in reviewing registration statement filings.

## **AMG Comments**

AMG’s comments on the Proposal touch on three principal topics, the dissemination of Staff comments and applicants’ responses thereto, the role of the precedent applications in the expedited review process, and the time frames around certain of the proposed procedures.

### *Dissemination of Comments and Responses*

With respect to the public dissemination of Staff comments and applicant’s responses thereto, AMG is concerned that the release of proprietary business processes and competitive commercial information contained in these exchanges with the Staff could cause competitive harm when publicly released. AMG understands that many applicants currently designate portions of these correspondences as confidential, and we expect that firms would seek confidential treatment more frequently if this type of proprietary and competitive information is slated to be publicly disseminated. Moreover, outgoing Staff comments typically are not subject to confidential treatment, and could include challenging questions that link to sensitive information. AMG also believes that applicants may be more reticent about including relevant but proprietary information in applications knowing that that information will become publicly available over time. With respect to novel applications, the Staff and applicants both benefit from having an open and honest dialogue as they work through complex issues. At times, the Staff may initially display opposition to an idea through its comments, but then later overcome that opposition after discussions with the applicants. Further, applicants may seek to respond to Staff comments informally (e.g., over the phone rather than in writing) as a way to avoid the eventual disclosure of such information. Because complex issues often need to be reduced to writing in order for the Staff to gain an accurate understanding of the matter, the increased verbal communications by applicants may negatively impact communications with the Staff.

In addition, AMG believes that these correspondences would be of limited value to investors, and we worry that the principal users of information contained in them will be competing firms seeking an information advantage, or worse, other actors motivated to attempt to exploit such proprietary and competitive information for nefarious purposes. In contrast to registration statements that include information that is necessary to enable investors to make investment decisions, the information included in exchanges between the Staff and applicants throughout the application process is not the type of information that an investor will find valuable in making an investment decision. Information regarding disclosure changes requested by the Staff differs in substance and nature from that in exchanges between Staff and applicants during the exemptive application process, which tend to be more policy-driven. Further, applicant’s responses tend to be more substantive and sensitive and can include internal positions and other proprietary matters.

Finally, we note that under the Proposal, expedited and standard applications will be deemed withdrawn if the applicant does not respond to Staff comments in writing within 30 and 120 days, respectively. Under the proposed “final disposition” definition, Staff comments and applicant responses will become public 120 days after an application is withdrawn. The “deemed withdrawn” period coupled with the “final disposition” definition could present obstacles for applications that involve lengthy, time-consuming discussions. AMG believes that applicants should be able to request an extension to the

response period such that its application is not deemed withdrawn, This will ensure that any comments and responses thereto are not made public prematurely.

AMG believes that the current process of making each application amendment filed publicly available provides sufficient transparency into the material considerations that went into the Commission's determination to approve a specific exemptive application. If the Commission believes that more transparency is necessary, AMG suggests that Rule 0-5 be amended to require applicants to submit application amendments that are marked to show changes from the previously filed application. This will highlight the changes to the current application, and will provide interested parties with insights into the considerations and concerns involved in the application review process without necessarily revealing proprietary or competitive information.

### Precedent Applications

Next, AMG believes that the Commission should consider replacing the "substantially identical" standard with some sort of objective criteria, or at the very least, clarify that the "substantially identical" standard as applied to applications that are highly similar and where any differences from the precedent applications are "not relevant in any material respects." AMG fears that even routine differences in organizational structures or other basic facts will disqualify otherwise materially similar applications from falling outside of the expedited review process, which would undermine the Commission's goal in proposing the expedited review process. AMG requests that the Commission provide guidance regarding the objective criteria used to determine that an application is "substantially identical" to a precedent application (and therefore eligible for expedited review).

In addition, AMG believes that where the Commission was comfortable enough to provide relief to one applicant, subsequent applicants that meet the applicable Rule requirements should receive the same treatment. In AMG's view, the Commission's grant of relief should not be part of establishing a trend involving multiple applicants, but rather expedited review should be granted where the request for relief meets the applicable criteria, including 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 1940 Act]." AMG believes that if the Commission's policy concerns have been addressed with the creation of a certain regulatory/governance framework in the initial application granting Commission relief, each subsequent application that meets the applicable standards should benefit from the expedited review process.

### Proposed Review Time Frames

Finally, AMG has several recommendations regarding the time periods contained in various aspects of the Proposals. First, the look-back period for the expedited review process should be expanded from 2 to 5 years. We believe that two years is too short of a time period where applications closely mirror precedent applications. As the Release acknowledges, there may be lines of applications that may be routine but which may not have been filed recently. If applications based on older precedent applications otherwise meet the requirements of the Rule, they should not be subjected to a wasteful and rigorous review process that will needlessly occupy Staff time and attention. As a potential middle ground solution, perhaps a look-back period of five years would be acceptable as long as there is a precedent application that has been approved within the last two years. This would address potential Commission concerns that the application no longer reflects current market conditions or addresses current Commission concerns.

With respect to applications eligible for expedited review, AMG believes that the 45-day review period strikes the appropriate balance and is consistent with a streamlined review process. However, we believe

that restarting the 45-day review clock upon the filing of a non-material amendment could have a chilling effect on applicants wishing to submit amendments. Instead, we suggest that the next review period should be limited 14 days when the applicant provides the Staff with a representation that the amendment does not contain material changes and the applicant supplies a marked copy of the amendment highlighting the changes from the previous filing. Where the amendment contains material changes or is otherwise deserving of a more extensive review, the 45-day review period would be appropriate.

Similarly, AMG agrees with the proposed 90-day review period for non-expedited applications generally, but we believe the 90-day extension period is excessive and should be shortened to 45 days. We understand that Staff reviews of subsequent amendments are not *de novo*, and therefore should not take as long as the review of the initial application filing. This is especially true where the applicant supplies the Staff with a marked copy of the amendment highlighting the changes from the prior filing. We believe that in most cases, 45 days will provide the Staff with sufficient time to thoroughly review the amendment and raise any additional concerns they may have about the application. Further, we note that the Staff will always have the ability to notify applicants when they need more time to review an application or an amendment that raises novel, complex or controversial issues. Finally, we suggest that the Staff be required to provide applicants with an update regarding the current status of the application (such “the application’s proposed Section 17(a) conditions are being reviewed by the Chief Counsel’s Office”) at approximately the mid-point of each review period (e.g., at approximately 45 days into a 90-day review period). This will enable applicants to better anticipate substantive comments the Staff may have and to begin to prepare appropriate responses.

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## Conclusion

AMG appreciates the efforts of the Commission and the staff to streamline the exemptive application process and to provide additional process efficiencies and structure, and sincerely appreciates the opportunity to provide these suggestions and your consideration of these views. AMG supports these efforts, and believes that with the modifications suggested in this letter, the Proposal will go a long way towards achieving the Commission's goals. We would be pleased to discuss these comments at your convenience. Please do not hesitate to contact either Timothy Cameron at [REDACTED] ([REDACTED]) or Lindsey Keljo at [REDACTED] ([REDACTED]), or our outside counsel, Edward Baer, Ropes & Gray LLP, at [REDACTED] ([REDACTED]), with any questions.

Sincerely,



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Asset Management Group – Head  
SIFMA AMG



Lindsey Weber Keljo, Esq.  
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Director and Associate General Counsel  
Securities Industry and Financial Markets  
Association

cc: Honorable Jay Clayton, Chairman, U.S. Securities and Exchange Commission  
Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission  
Honorable Robert J. Jackson, Jr., Commissioner, U.S. Securities and Exchange Commission  
Honorable Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission  
Honorable Allison Herren Lee, Commissioner, U.S. Securities and Exchange Commission  
Ms. Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission