

[FR Doc. 2021-00153 Filed 1-7-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

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

Proposed Collection; Comment Request, Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

Rule 0-1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") plans to submit to the Office of Management and Budget a request for extension of the previous approved collection of information discussed below.

The Investment Company Act of 1940 (the "Act")¹ establishes a comprehensive framework for regulating the organization and operation of investment companies ("funds"). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.²

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0-1 (17 CFR 270.0-1).³ Rule 0-1, as subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0-1 defines terms that serve as conditions to the availability of certain of the Commission's exemptive rules. More specifically, the term "independent legal counsel," as defined in rule 0-1, sets out conditions that

funds must meet in order to rely on any of ten exemptive rules ("exemptive rules") under the Act.⁴

The Commission amended rule 0-1 to include the definition of the term "independent legal counsel" in 2001.⁵ This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an "independent legal counsel." This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board's counsel has represented the fund's investment adviser, principal underwriter, administrator (collectively, "management organizations") or their "control persons"⁶ during the past two years, rule 0-1 requires that the board's independent directors make a determination about the adequacy of the counsel's independence. A majority of the board's independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel's prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel's professional judgment and legal representation. Rule 0-1 also requires that a record for the basis of this determination is made in the minutes of the directors' meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the

independent directors must re-evaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of "independent legal counsel" under rule 0-1. We assume that approximately 3035 funds rely on at least one of the exemptive rules annually.⁷ We further assume that the independent directors of approximately one-third (1,010) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.⁸ We estimate that each of these 1,010 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 758 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately \$175,523. To calculate this total annual cost, the Commission staff assumed that approximately two-thirds of the total annual hour burden (505 hours) would be incurred by a compliance manager with an average hourly wage rate of \$312 per hour,⁹ and one-third of the annual hour burden (253 hours) would be incurred by compliance clerk with an average hourly wage rate of \$71 per hour.¹⁰

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction

⁷ Based on statistics compiled by Commission staff, we estimate that there are approximately 3373 funds that could rely on one or more of the exemptive rules (this figure reflects the three-year average of open-end and closed-end funds (3,329) and business development companies (104)). Of those funds, we assume that approximately 90 percent (3,035) actually rely on at least one exemptive rules annually.

⁸ We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

⁹ The estimated hourly wages used in this PRA analysis were derived from the Securities Industry and Financial Markets Association's Reports on Management and Professional Earnings in the Securities Industry (2013) (modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead) (adjusted for inflation), and Office Salaries in the Securities Industry (2013) (modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead) (adjusted for inflation).

¹⁰ $(505 \times \$312/\text{hour}) + (253 \times \$71/\text{hour}) = \$175,523$.

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

⁵ See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3735 (Jan. 16, 2001)).

⁶ A "control person" is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund's management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

¹ 15 U.S.C. 80a.

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

³ Investment Company Act Release No. 4 (Oct. 29, 1940) (5 FR 4316 (Oct. 31, 1940)). Note that rule 0-1 was originally adopted as rule N-1.

Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street, NE Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: January 5, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-00144 Filed 1-7-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 157, January 4, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, January 6, 2021 at 2:00 p.m.

CHANGES IN THE MEETING: The closed meeting scheduled for Wednesday, January 6, 2021 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: January 6, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021-00319 Filed 1-6-21; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-305, OMB Control No. 3235-0346]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:
Rule 34b-1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 34b-1 under the Investment Company Act (17 CFR 270.34b-1) governs sales material that accompanies or follows the delivery of a statutory prospectus ("sales literature"). Rule 34b-1 deems to be materially misleading any investment company ("fund") sales literature required to be filed with the Securities and Exchange Commission ("Commission") by Section 24(b) of the Investment Company Act (15 U.S.C. 80a-24(b)) that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482). Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among funds.

The Commission estimates that on average approximately 351 respondents file 7,362¹ responses that include the information required by rule 34b-1 each year. The burden resulting from the collection of information requirements of rule 34b-1 is estimated to be 6 hours per response. The total hourly burden for rule 34b-1 is approximately 46,278 hours per year in the aggregate.²

¹ The estimated number of responses to rule 34b-1 is composed of 7,362 responses filed with FINRA and 351 responses filed with the Commission in 2019.

² 7,713 responses × 6 hours per response = 46,278 hours.

The collection of information under rule 34b-1 is mandatory. The information provided under rule 34b-1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: January 5, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-00145 Filed 1-7-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34161; 812-15106]

Esoterica Thematic Trust and Esoterica Capital LLC; Notice of Application

January 4, 2021.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"), and sections 6-07(2)(a), (b), and (c) of