

SUPPORTING STATEMENT
Rule 203A-2

A. JUSTIFICATION

1. Necessity for the Information Collection

Pursuant to section 203A of the Advisers Act of 1940 (“Advisers Act” or “Act”), an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless that adviser has at least \$25 million in assets under management or advises a Commission-registered investment company. Advisers failing to meet either requirement are prohibited from registering with the Commission.¹ Section 203A(c) of the Advisers Act, however, authorizes the Commission to exempt an adviser from the prohibition on Commission registration if the prohibition would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes" of section 203A of the Act.² Under this authority, the Commission adopted rule 203A-2 in 1997 to provide certain types of advisers with exemptions from the prohibition on registration. As discussed below, rule 203A-2 was amended by the

¹ 15 U.S.C. 80b-3a.

² 15 U.S.C. 80b-3a(c).

Commission in 2002 when it adopted an exemption for Internet advisers under subsection (f).³

Rule 203A-2(f) exempts from the prohibition on Commission registration an Internet investment adviser who (1) provides investment advice to all of its clients exclusively through computer software-based models or applications termed under the rule as “interactive websites”⁴ and (2) maintains in an easily accessible place, for a period of not less than five years from the filing of a Form ADV relying on the rule,⁵ a record demonstrating that the adviser provides investment advice to its clients exclusively through an interactive website in accordance with the rule. Rule 203A-2(f)’s record maintenance requirement is a “collection of information” for Paperwork Reduction Act (“PRA”) purposes. The title for the collection of information is “Exemption for Certain Investment Advisers Operating Through the Internet”. This collection of information is

³ See Exemption for Certain Investment Advisers Operating Through the Internet, Investment Advisers Release No. 2091 (December 12, 2002) (67 F.R. 77620 (Dec. 18, 2002)). Other exempted advisers include: (1) nationally recognized statistical rating organizations, commonly referred to as rating agencies; (2) pension consultants that provide investment advice to employee benefit plans with respect to assets of plans having an aggregate value of at least \$50 million during the adviser's last fiscal year; (3) an adviser that controls, is controlled by, or is under common control with a Commission-registered adviser if the two advisers have the same principal office and place of business; (4) a newly formed adviser with a reasonable expectation that it would be eligible for Commission registration within 120 days after its registration has become effective with the Commission; and (5) an adviser required to register with the securities authorities in at least 30 states. 17 CFR 275.203A-2.

⁴ 17 CFR 275.203A-2(f). Included in rule 203A-2(f) is a limited exception to the interactive website requirement which allows these advisers to provide investment advice to no more than 14 clients through other means on an annual basis. 17 CFR 275.203A-2(f)(1)(i). The rule also precludes advisers in a control relationship with an SEC-registered Internet adviser from registering with the Commission under the common control exemption provided by rule 203A-2(c) (17 CF.R. 275.203A-2(c)). 17 CFR 275.203A-2(f)(1)(iii).

⁵ The five-year record retention period is a similar recordkeeping retention period as imposed on all SEC-registered advisers under rule 204-2 of the Adviser Act. See rule 204-2 (17 CFR 275.204-2).

necessary for use by the Commission staff in its examination and oversight program. The collection of information for rule 203A-2(f) is currently approved under OMB control number 3235-0559 (expires December 31, 2008).

Respondents to this collection of information are advisers who provide investment advice through interactive websites and who rely on the exemption to register with the Commission. Providing this information is mandatory in qualifying for and maintaining Commission registration eligibility under rule 203A-2(f). Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential under section 210(b) of the Advisers Act.⁶

2. Purpose of the Information Collection

The information collected under rule 203A-2(f) permits the Commission's examination staff to determine an advisers' eligibility for registration with the Commission under this exemptive rule.

3. Role of Improved Information Technology

An investment adviser registering or registered with the Commission under rule 203A-2(f) must maintain, in an easily accessible place, for five years from the filing of a Form ADV, a record that demonstrates that the adviser provides investment advice to its clients exclusively through an interactive website as defined under the rule.⁷ Advisers are permitted to meet the recordkeeping obligation under the rule micrographically or electronically, and their storage of this required record in such media is governed by

⁶ 15 U.S.C. 80b-10(b).

⁷ 17 CFR 275.203A-2(f)(ii).

Advisers Act rule 204-2(g).⁸ The rule does not require the reporting of any information to, or the filing of any documents with, the Commission, so the Commission's use of computer technology in its various electronic filing systems will be of no effect.

4. Efforts to Identify Duplication

The recordkeeping requirement of rule 203A-2(f) is not duplicated elsewhere for investment advisers that must comply with this collection requirement.

5. Effect on Small Entities

The collection of information requirements are the same for all investment advisers registering or registered with the Commission, including those that are small entities. Under section 203A, advisers with assets under management of less than \$25 million are eligible to register with the Commission as a general rule only if they advise a registered investment company; however, under rule 203A-2(f), these small entities are permitted to register with the Commission. The recordkeeping requirement under the rule affects small advisers and larger advisers similarly, because the required information is about the adviser maintaining the records and about its business, which should be readily available to any adviser regardless of size. It would defeat the purpose of the rule to exempt small entities from these requirements.

⁸ 17 CFR 275.204-2(g). Rule 204-2 requires that the record be arranged and indexed in a way that permits easy location, access, and retrieval of any particular record, 17 CFR 275.204-2(g)(2)(ii), and that the micrographic or electronic duplicate of the record be separately stored for five years, 17 CFR 275.204-2(g)(2)(iii). An investment adviser must establish and maintain procedures to keep the required records so as to reasonably safeguard the records from loss, alteration, or destruction; and to limit access to the records to properly authorized personnel and the Commission. See 17 CFR 275.204-2(g)(3).

6. Consequences of Less Frequent Collection

An adviser registering with the Commission under rule 203A-2(f) must maintain a record, for a period of not less than five years from the filing of a Form ADV, showing that substantially all of its advisory business has been conducted through an interactive website. Because the period between examinations may be as long as five years, it is important that the Commission have access to records that cover the period between examinations. If the required information is not collected, the Commission's examiners would not be able to verify that an investment adviser's reliance on rule 203A-2(f) in registering with the Commission was appropriate.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Rule 203A-2(f) includes a recordkeeping provision under which an adviser relying on the rule to register with the Commission would be required to maintain certain information, specified more fully in Item 1 above, for five years. Although this period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2)(iv), the long-term retention of these records is designed to contribute to the effectiveness of the Commission's examination and inspection program, and is necessary for the Commission's inspection program to determine compliance with the Advisers Act, including an adviser's continued eligibility to register with the

Commission. Because the period between examinations may be as long as five years, it is important that the Commission have access to records that cover the period between examinations.

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser industry through public conferences, meetings and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

In addition, the Commission requested public comment on the information collection requirements in rule 203A-2(f) before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Responses to the recordkeeping responses required under rule 203A-2(f) in the context of the Commission's examination and oversight program are generally kept confidential.⁹

11. Sensitive Questions

⁹ See Section 210(b) of the Advisers Act.

Not applicable.

12. Estimate of Hourly Burden

Rule 203A-2(f) requires advisers registering with the Commission under the exemption to maintain a record demonstrating that the adviser's advisory business has been conducted through an interactive website in accordance with the rule. Although most advisers registering under the rule usually generate the necessary records in the ordinary conduct of their Internet advisory business, the recordkeeping requirement of rule 203A-2(f) nonetheless may impose a small additional burden on these advisers. We continue to estimate that this recordkeeping burden should not exceed an average of four (4) hours annually per adviser.¹⁰

The number of respondents has increased from the estimated 25 advisers to 39 investment advisers.¹¹ Accordingly, the total recordkeeping burden hours for all rule 203A-2(f) advisers has increased from 100 hours to 156 hours.¹²

¹⁰ The adviser would need only to demonstrate that no more than 15 of its clients obtain investment advice from the firm through means other than the interactive website. Internet advisers that conduct their business exclusively through interactive websites would likely need to spend very little time documenting their compliance with the condition. An adviser that also meets in person with some clients or communicates with them through other means may need to spend more time.

¹¹ This estimate is based on information reported by advisers through the Investment Adviser Registration Depository ("IARD"). Based on IARD data as of May 15, 2008, of the approximately 11,000 SEC-registered advisers, 39 checked Item 2.A(10) of Part 1A of Form ADV to indicate their basis for SEC registration under the Internet advisers rule

¹²

? Four (4) hours x 39 advisers = 156 hours.

The Commission estimates that the total cost to each Internet adviser to comply with the recordkeeping provision of rule 203A-2(f) would be approximately \$1008,¹³

such that the total cost for the 39 advisers relying on this exemption at this time would be \$39,312.¹⁴

13. Estimate of Total Annual Cost Burden

Excluding the burden hours identified in item 12, the collection of information requirement for rule 203A-2(f) is not expected to impose additional non-labor or capital costs. The Commission anticipates that most advisers registering under the rule would generate the necessary records in the ordinary conduct of their advisory businesses.

14. Estimate of Cost to the Federal Government

There are no costs to the federal government directly attributable to rule 203A-2(f).

15. Explanation of Changes in Burden

The revised burden for rule 203A-2(f) results from an increase in the number of advisers relying on the rule for Commission registration eligibility and an increase in the average hourly compensation rate for the adviser employees collecting such information.

¹³ Four (4) hours x \$252 = \$1008. The Commission estimated this figure by multiplying the burden hours to comply with rule 203A-2(f)'s recordkeeping requirements (4 hours) by an average hourly compensation rate of \$252. The compensation rate used is the rate for a Sr. Operations Manager in the Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2007 and is modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

¹⁴ Four (4) hours x \$252 = \$1008 x 39 advisers = \$39,312.

The annual recordkeeping burden under the rule previously was 100 hours, or four hours per adviser for a total of 25 advisers at an hourly compensation rate of \$44.32. Adjusting this number for the fourteen additional advisers relying on the rule and the increased hourly compensation rate of \$252, the annual recordkeeping burden is revised from 100 hours to 156 hours and, combined with the increased hourly compensation rate, the total cost for the advisers relying on this exemption increased from \$4,432 to \$39,312.¹⁵

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

¹⁵ Four (4) hours x 39 advisers = 156 hours x \$252/hour = \$39,312.

EXHIBIT LIST

- A. 15 U.S.C. 80b-3a
- B. Exemption for Certain Investment Advisers Operating Through the Internet, Investment Advisers Release No. 2091 (Dec. 12, 2002) (67 F.R. 77619 (Dec. 18, 2002))
- C. 17 CFR 275.203A-2
- D. 17 CFR 275.204-2
- E. 15 U.S.C. 80b-10(b)
- F. 17 CFR 275.0-7
- G. 5 CFR 275.1320.5(d)(2)