SUPPORTING STATEMENT

Rule 203A-5

A. JUSTIFICATION

1. Necessity of Information Collections

Pursuant to section 203A of the Investment Advisers Act of 1940 ("Advisers Act" or "Act"), an investment adviser that has at least $25 million in assets under management generally is prohibited from registering with the Securities and Exchange Commission ("Commission" or "SEC").[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[2] amends section 203A to prohibit from Commission registration an adviser that has assets under management between $25 million and $100 million, and: (i) is required to be registered as an investment adviser with the state in which it maintains its principal office and place of business; and (ii) if registered, would be subject to examination as an adviser by that state.[3] As a consequence of section 410 of the Dodd-Frank Act, we estimate that approximately 4,100 SEC-registered advisers will be required to withdraw their registrations and register with one or more state securities authorities.[4]

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[1] 15 U.S.C. 80b-3a. An adviser must register with the Commission if it is not regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business or if it advises a Commission-registered investment company. *Id.*

[2] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[3] *See* section 410 of the Dodd-Frank Act. A mid-sized adviser may register with the Commission if it would be required to register with 15 or more states, or if it is an adviser to a registered investment company or business development company under the Investment Company Act of 1940. *See id.*

[4] According to data from the Investment Adviser Registration Depository ("IARD") as of September 1, 2010, 4,136 SEC-registered advisers either: (i) had assets under management between $25 million and $100 million and did not indicate on Form ADV Part 1A that they are relying on an exemption from the prohibition on Commission registration; or (ii) were permitted to register with us because they rely on the registration of an SEC-registered affiliate that has assets under management between $25 million and

The Commission proposed a new rule, rule 203A-5, to provide for a transitional process by which an adviser no longer eligible for Commission registration would transition to state registration. If adopted, rule 203A-5 would require each investment adviser registered with the Commission on July 21, 2011 to file an amendment to its Form ADV no later than August 20, 2011 (30 days after the July 21, 2011 effective date of the amendments to section 203A).[5] The amendment to Form ADV would, among other things, require each adviser to declare whether it remains eligible for Commission registration and to report the market value of its assets under management determined within 30 days of the filing.[6] An adviser no longer eligible for Commission registration would have to withdraw its Commission registration by filing Form ADV-W no later than October 19, 2011 (60 days after the required refiling of Form ADV).[7]

The proposed rule's requirement to file an amendment to Form ADV would be a "collection of information" for Paperwork Reduction Act ("PRA") purposes.[8] The title of the new collection of information is: "Rule 203A-5." The likely respondents to this information collection are all investment advisers registered with the Commission on July 21, 2011. We have submitted this collection of information to OMB for review, and OMB has not yet assigned this collection a control number. An agency may not conduct

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$100 million and they are not relying on an exemption.

[5] Proposed rule 203A-5(a). The proposing release is attached as Appendix A ("Proposing Release").

[6] *See* proposed rule 203A-5(a); Appendix A, section II.A.2.

[7] Proposed rule 203A-5(b). The rule also would permit the Commission to postpone the effectiveness of, and impose additional terms and conditions on, an adviser's withdrawal from SEC registration if the Commission institutes certain proceedings before the adviser files Form ADV-W. Proposed rule 203A-5(c).

[8] The PRA burden of the Form ADV-W filings that mid-sized advisers would be required to file to withdraw from Commission registration is reflected in the revised PRA burden for Form ADV-W. *See* Appendix A, note 455 and accompanying text.

or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If the proposal is adopted, this collection of information would be found at 17 CFR 275.203a-5 and would be mandatory. The information collected on Form ADV would not be kept confidential.

2. Purposes of Information Collection

The Form ADV filing that would be required by rule 203A-5 would enable each investment adviser to determine whether it meets the revised eligibility criteria for Commission registration, and would provide the Commission and the state regulatory authorities with information necessary to identify those advisers required to transition to state registration and to understand the reason for the transition or basis for continued Commission registration.[9]

3. Role of Improved Information Technology

The information collected pursuant to Form ADV takes the form of disclosures made by investment advisers to their clients and potential clients and reporting to the Commission. Investment advisers currently file their Form ADV electronically on the IARD system. This method of collecting information reduces the regulatory burden upon investment advisers by permitting them to file applications for registration, and amendments thereto, at one central location, rather than filing Form ADV separately with the Commission and the states for notice filing purposes.

4. Efforts to Identify Duplication

[9] Proposed amended Item 2.A. of Form ADV, Part 1A would reflect the requirements of the Advisers Act (as amended by the Dodd-Frank Act) and the related rules, and would require an investment adviser to mark Item 2.A.(13) if the adviser is no longer eligible to remain registered with the Commission. For a discussion of the proposed rules, see Appendix A, sections II.A.5. and II.A.7., and for a discussion of Item 2.A, see Appendix A, section II.A.2.

The collection of information requirements of proposed rule 203A-5 are not duplicated elsewhere for investment advisers that must comply with these collection requirements.

5. Effect on Small Entities

The requirements of proposed rule 203A-5 would be the same for all investment advisers registered with the Commission on July 21, 2011, including those advisers that are small entities. The rule would not affect most advisers that are small entities because they are generally required to be registered with one or more state securities authorities and not with the Commission. It would defeat the purpose of the rule to exempt small entities from these requirements. The Commission and state securities authorities need to be able to identify all of the advisers (both small advisers and larger advisers) switching to state registration or remaining registered with the Commission so they are able to verify which advisers should switch.

6. Consequences of Less Frequent Collection

Rule 203A-5 would require each investment adviser registered with the Commission on July 21, 2011 to file an amendment to its Form ADV that would, among other things, require each adviser to declare whether it remains eligible for Commission registration and to report the market value of its assets under management determined within 30 days of the filing.[10] This collection of information is necessary to enable the Commission and the state regulatory authorities to identify those advisers required to transition to state registration and to understand the reason for the transition or basis for continued Commission registration. If the required information is not collected, the Commission and state regulatory authorities would not be able to verify which advisers

[10] *See* proposed rule 203A-5(a); Appendix A, section II.A.2.

should switch to state registration. Completing Form ADV also would assist each adviser to determine whether it meets the revised eligibility criteria for Commission registration.

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

Not applicable.

8. Consultations Outside of the Agency

In its release proposing new rules and rule amendments to implement the Dodd-Frank Act, the Commission requests public comment on the effect of the information collection under this rule. Comment received may be viewed at http://www.sec.gov/comments/s7-36-10/s73610.shtml. The Commission will consider all comments received on the proposal. In addition, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser profession 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 facing the industry.

9. Payment or Gifts to Respondents

None.

10. Assurances of Confidentiality

The information collected pursuant to rule 203A-5 would be provided through Form ADV filings with the Commission. These disclosures are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

We estimate that there would be approximately 11,850 respondents to this

collection of information filing an amendment to Form ADV.[11] Each respondent would respond once. We anticipate that the hour burden to refile Form ADV to comply with rule 203A-5 would be more like the burden to file an annual amendment than the burden to complete an other-than-annual amendment, as a result of our proposed changes to Part 1A. For purposes of calculating the currently approved PRA burden for Form ADV, Commission staff estimated that an annual updating amendment would take each adviser approximately 6 hours per amendment, on average.[12] In addition, for purposes of the increased PRA burden for Form ADV, Commission staff estimates that the proposed amendments to Part 1A of Form ADV would take each adviser approximately 4.5 hours, on average, to complete.[13] As a result, we estimate a total average time burden of 10.5 hours for each respondent completing the amendment to Form ADV (excluding private fund information), resulting in a total one-time burden of 124,425 hours.[14] Additionally, of these 11,850 registered advisers, we estimate that 3,500 advise one or more private funds and would have to complete the private fund reporting requirements the Commission proposed.[15] We expect this would take 33,350 hours, in the aggregate,[16] resulting in a total one-time burden of 157,775 hours for advisers to file Form ADV under rule 203A-5.[17]

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[11] Based on IARD data as of September 1, 2010, 11,867 investment advisers are registered with the Commission. We have rounded this number to 11,850 for purposes of our analysis.

[12] *See* Appendix A, section V.B.2.a.3.

[13] *See* Appendix A, sections V.B.1.a. and V.B.2.a.3.

[14] [6 hours (Form ADV annual amendment) + 4.5 hours (new new Form ADV items)] x 11,850 advisers = 10.5 hours x 11, 850 advisers = 124,425 hours.

[15] *See* Appendix A, note 400.

[16] *See* Appendix A, note 403.

[17] 124,425 hours (Form ADV amendment) + 33,350 hours (private fund reporting) = 157,775 hours.

We anticipate that completing this filing would most likely be equally allocated between a senior compliance examiner and a compliance manager, at an hourly rate of $210 and $294 per hour, respectively.[18] We estimate that each adviser would incur average costs of approximately $2,646 to complete the Form ADV amendment excluding private fund information,[19] for a total aggregate cost of $31,355,100.[20] Additionally, we estimate the total aggregate cost for advisers to complete the private fund reporting requirements would be $8,404,200,[21] resulting in total one-time costs of approximately $39,759,300.[22]

13. Estimate of Total Annual Cost Burden

$0.

14. Estimate of Cost to the Federal Government

$0.

15. Explanation of Changes in Burden

Not applicable. This is the first request for approval of the collection of information for rule 203A-5.

16. Information Collections Planned for Statistical Purposes

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[18] Data from the Securities Industry Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2009*, 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, suggest that costs for a senior compliance examiner and a compliance manager are $210 and $294 per hour, respectively.

[19] [5.25 hours x $210] + [5.25 hours x $294] = $1,102.50 + $1,543.50 = $2,646.

[20] 11,850 advisers x $2,646 = $31,355,100.

[21] [16,675 hours x $210] + [16,675 hours x $294] = $3,501,750 + $4,902,450 = $8,404,200. As noted above, we expect that the performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. *See supra* note 18.

[22] $31,355,100 (Form ADV amendment) + $8,404,200 (private fund reporting) = $39,759,300.

Not applicable.

17. Approval to Display Expiration Date

Not applicable.

18. Exception to Certification Requirement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.