

SUPPORTING STATEMENT
Rule 204-3

A. JUSTIFICATION

1. Necessity for the Information Collection

Rule 204-3, the “brochure rule,” requires an investment adviser to deliver their brochure to their new clients or prospective clients before or at the start of the advisory relationship. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Rule 204-3 also requires that an investment adviser deliver, or offer in writing to deliver upon written request, the brochure to their existing clients annually in order to provide them with current information about the adviser. Under rule 204-3, the investment adviser must furnish the required information to clients and prospective clients by providing either a copy of Part II of Form ADV, the investment adviser registration form, or a written document containing at least the information required by Part II of Form ADV. This collection of information is found at 17 CFR 275.204-3 and is mandatory.

The information the brochure rule requires is necessary for several reasons. It enables the client or prospective client to evaluate the adviser’s background and qualifications, and to determine whether the adviser’s services and practices are appropriate for that client. It informs the client of the nature of the adviser’s business, which may inform or limit the client’s rights under the advisory contract. It appries the client of situations in which the interests of the adviser may potentially be adverse to or in conflict with those of the client. Under some circumstances, it enables the client to consider the financial condition of the adviser in deciding whether to entrust funds or securities to the custody of the adviser or whether to pay large advisory fees in advance.

The information that Rule 204-3 requires to be contained in the brochure is also used by the Commission and staff in its enforcement, regulatory, and examination programs. Responses are not kept confidential. The likely respondents to this information collection are investment advisers registered with the Commission.

2. Purposes of the Information Collection

Investors need accurate information about an investment adviser and its practices in order to determine whether to retain, or to continue to employ, that adviser. The Commission and staff need the information in its enforcement, regulatory, and examination programs.

3. Role of Improved Information Technology

The information collection pursuant to rule 204-3 takes the form of disclosures made by investment advisers to their clients and potential clients. Accordingly, the Commission's use of computer technology will have little effect.

4. Efforts to Identify Duplication

The collection of information requirements of rule 204-3 are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of rule 204-3 are the same for all investment advisers registered with the Commission, including those that are small entities. Small investment advisers, however, are more likely to have fewer advisory clients than larger investment advisers, and thus the delivery requirements should impose lower burdens on small advisers.

6. Consequences of Less Frequent Collection

Rule 204-3 requires an investment adviser to deliver a firm brochure to each client and prospective client, and to deliver updates to that information. The consequences of not collecting this information would be that clients and prospective clients may not have the information they need in order to evaluate the adviser's business practices and to determine whether to select or retain that adviser.

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

The collection of information imposes no additional requirements regarding record retention.

8. Consultation Outside Agency

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 Gift to Respondents

None.

10. Assurance of Confidentiality

The information collected pursuant to rule 204-3 takes the form of disclosures to clients and prospective clients. Accordingly, these disclosures are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

Rule 204-3, the “brochure rule,” requires an investment adviser to deliver their brochure to their new clients or prospective clients before or at the start of the advisory relationship. Rule 204-3 also requires that an investment adviser deliver, or offer in writing to deliver upon written request, the brochure to their existing clients annually in order to provide them with current information about the adviser. As currently approved, the total number of respondents is 9,728. The current approved total estimated collection of information burden imposed by rule 204-3 is 6,224,623 hours per year, or approximately 639.87 hour per respondent. Each investment adviser is estimated to have an average of 670 clients and make an average of three responses to each client annually. The total number of annual responses is 19,533,280.¹

We are updating and revising the total collection of information burden based upon new data.² Our new data indicates that there are 10,787 advisers registered with the SEC. Using this new number of total respondents for our calculation, the revised total estimated collection of information burden imposed by rule 204-3 is now increased to 6,902,278 hours,³ and the total number of annual responses is now increased to 21,681,870.⁴

An adviser would likely use clerical staff to distribute the new brochures and all required brochure supplements to the adviser’s current clients. The Commission staff

¹ 9,728 respondents x 670 clients x 3 responses = 19,533,280 responses.

² The data are collected from the Form ADVs filed through the IARD system as of August 31, 2007.

³ 10,787 respondents x 639.87 hour per respondent = 6,902,278 hours.

⁴ 10,787 respondents x 670 clients x 3 responses = 21,681,870 responses.

estimates the hourly wage for clerical staff to be \$41 per hour,⁵ including benefits. The total cost of the initial distribution, per adviser, therefore would be an estimated \$6,867.50,⁶ or \$74,079,722.50 total for all advisers.⁷ The total cost of distributing an update is estimated to be the same. An estimated two distributions per year therefore would total \$13,735.00,⁸ or \$148,159,445 total for all advisers.⁹ Rule 204-3 now results in a total collection of information cost of \$222,239,167.50.¹⁰

13. Estimate of Total Annual Cost Burden

\$0.

14. Estimate of Cost to the Federal Government

Rule 204-3 does not impose any costs on the Federal government, since there is no separate submission of Part II of form ADV or firm brochure required with the Commission.

15. Explanation of Changes in Burden

We have revised the estimated burden based on new information on the number of SEC-registered investment advisers that we obtained from Form ADVs filed through the IARD as of August 31, 2007.

16. Information Collection Planned for Statistical Purposes

Not applicable.

⁵ \$41/hour figure for a clerk is from the SIA Report on Office Salaries in the Securities Industry 2006.

⁶ (670 clients x .25 hours per client) x \$41 = \$6,867.50

⁷ \$6,867.50 per adviser x 10,787 advisers = \$74,079,722.50

⁸ (670 clients x .25 hours per client x 2 distributions) x \$41 = \$13,735.00

⁹ \$13,735.00 per adviser x 10,787 advisers = \$148,159,445

¹⁰ \$74,079,722.50 for initial distribution cost + \$148,159,445 for subsequent distribution = \$222,239,167.50.

17. Approval to Not Display Expiration Date

Not applicable.

18. Exception to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.