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**SUPPORTING STATEMENT**  
**Rule 204-2**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 204 of the Advisers Act (15 USC 80b-4) provides that investment advisers required to register with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Rule 204-2 sets forth the requirements for maintaining and preserving specified books and records.<sup>1</sup>

The collection of information under rule 204-2 is necessary for the Commission staff to use in its examination and oversight program. The collection of information has been previously approved and subsequently extended. This collection of information is found at 17 CFR 275.204-2 and is mandatory. The respondents are investment advisers registered with us. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.<sup>2</sup> The records that an adviser must keep in accordance with rule 204-2 must generally be retained for not less than five years.<sup>3</sup>

**2. Purpose of the Information Collection**

Rule 204-2 requires SEC-registered investment advisers to maintain copies of certain books and records relating to their advisory business. The purpose of the information collection, which has previously been submitted to OMB, would not change. The collection of information

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<sup>1</sup> 17 CFR 275.204-2.

<sup>2</sup> See section 210(b) of the Advisers Act (15 U.S.C. 80b-10(b)).

<sup>3</sup> See rule 204-2(e) (17 CFR 275.204-2(e)). The standard retention period required for books and records under rule 204-2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser.

under rule 204-2 is necessary for the Commission staff to use in its examination and oversight program. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.<sup>4</sup> Respondents are investment advisers registered with the Commission. This collection of information is found at 17 CFR 275.204-2.

### **3. Role of Improved Information Technology**

The Commission's use of computer technology in connection with this information collection, which has been previously approved by OMB, would not change. The Commission currently permits advisers to maintain records required by the rule through electronic media.<sup>5</sup>

### **4. Efforts to Identify Duplication**

The collection of information requirements of the rule are not duplicated elsewhere for investment advisers that must comply with the collection requirements.

### **5. Effect on Small Entities**

The requirements of the rule are the same for all investment advisers registered with the Commission, including those that are small entities. OMB has previously approved the effect of this collection on all advisers in general, including advisers that are small entities. Therefore, there is no change that would effect small entities. Moreover, it would defeat the purpose of the rule to exempt small entities from these requirements.

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<sup>4</sup> See Section 210(b) of the Advisers Act (15 U.S.C. 80b-10(b)).

<sup>5</sup> See Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Advisers Act Release IA-1945; (May 24, 2001).

## **6. Consequences of Less Frequent Collection**

The collection frequency with respect to the information collection, as previously approved by OMB, would not change. Less frequent information collection would be incompatible with the objectives of the rule and could hinder the Commission's oversight and examination program for investment advisers and thereby reduce the protection to investors.

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

The collection requirements under Rule 204-2 generally require advisers to maintain documents for five years, and in some cases longer.<sup>6</sup> The current retention period would not be affected. Although this period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2)(iv), OMB has previously approved the collection with this retention period. The retention periods in Rule 204-2 are warranted because the recordkeeping requirements in rule 204-2 of the Advisers Act are designed to contribute to the effectiveness of the Commission's examination and inspection program. 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 entire period between examinations.

## **8. Consultation Outside the Agency**

The Commission and the staff of the Division of Investment Management continue to 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

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<sup>6</sup> See rule 204-2(e) (17 CFR 275.204-2(e)). The standard retention period required for books and records under rule 204-2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser.

facing the industry.

In addition, the Commission requested public comment on the information collection requirements in rule 204-2 before submitting this request for extension and approval to the OMB. The Commission received no comments addressing the proposed collections.

**9. Gift or Gift to Respondents**

Not applicable.

**10. Assurance of Confidentiality**

Responses provided to the Commission pursuant to Rule 204-2 in the context of the Commission's examination and oversight program are generally kept confidential.<sup>7</sup>

**11. Sensitive Questions**

Not applicable.

**12. Estimate of Hour Burden**

Rule 204-2 requires SEC-registered investment advisers to maintain copies of certain books and records relating to their advisory business. The currently approved collection of information for rule 204-2 is 1,762,267 hours, or 181.15 hours per registered adviser<sup>8</sup>. As of August 31, 2007, there were 10,787 SEC registered advisers that were required to maintain copies of certain books and records relating to their advisory business. The total number of respondents would be 10,787, and the total annual responses would be 10,787.

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<sup>7</sup> See Section 210(b) of the Advisers Act.

<sup>8</sup> 9,728 registered advisers x 181.15 hours per adviser = 1,762,267 hours.

This is an increase of 1,059 registered advisers over the previously approved burden. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 204-2 by 191,842 hours<sup>9</sup> for a total of 1,954,109 hours.<sup>10</sup>

An adviser would likely use a combination of compliance clerks and clerical staff to make and keep the information and records required under the rule. The Commission staff estimates the hourly wage for compliance clerks to be \$56 per hour, including benefits, and the hourly wage for clerical staff to be \$41 per hour, including benefits.<sup>11</sup> For each adviser 181.15 hours burden hours would be required to make and keep the information and records required under the rule. Compliance clerks would perform an estimated 31.15 hours, and clerical staff also would perform an estimated 150.0 hours. The total cost per response therefore would be an estimated \$7,894.40,<sup>12</sup> for a total burden cost of \$85,156,892.80.<sup>13</sup>

These estimates of average burden hours and average costs of those average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study, or the cost of Commission rules and forms.

### **13. Estimate of Total Annual Cost Burden**

We estimate that the increase in registrants would not impose a material cost burden,

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<sup>9</sup> 1,059 registered advisers x 181.154 hours per adviser = 191,842 hours.

<sup>10</sup> 10,787 registered advisers x 181.1541 hours per adviser = 1,954,109 hours.

<sup>11</sup> The \$56/hour figure for a compliance clerk and \$41/hour for clerical staff is from the SIA Report on Office Salaries in the Securities Industry 2006.

<sup>12</sup> (31.15 hours per compliance clerk x \$56) + (150.0 hours per clerical staff x \$41)  
(\$1,744.40 + \$6,150.00) = \$7,894.40.

<sup>13</sup> \$7,894.40 per adviser x 10,787 advisers = \$85,156,892.80.

apart from the cost of the burden hours with respect to all the information collections, except that the currently-approved collection of information for Rule 204-2 includes a non-labor cost estimate of \$12,221,000. As discussed above, we estimate the annual aggregate hour burden under the collection would increase by 191,842 hours (from 1,762,267 to 1,954,109 hours). We estimate there would be a proportional increase in the non-labor cost estimate to \$13,551,390.<sup>14</sup>

**14. Estimate of Cost to the Federal Government**

There are no additional costs to the federal government.

**15. Explanation of Changes in Burden**

Neither the number of responses per investment adviser nor the number of hours per response changed since the last estimate. However, as discussed in Item 12 above, the number of respondents has increased from approximately 9,728 investment advisers to approximately 10,787 investment advisers. The total burden hours for all respondents has increased from 1,762,267 hours per year to 1,954,109 hours per year. All changes in burden are attributable to the increase in the number of respondents.

**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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.

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$(1,954,109 \text{ hours} / 1,762,267 \text{ hours}) \times \$12,221,000 = \$13,551,390.$