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SUPPORTING STATEMENT
Rule 206(4)-6

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act” or “Act”) [15 USC 80b-6(4)] prohibits any investment adviser from engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative and gives the Securities and Exchange Commission (“Commission”) the power, by rules and regulations, to define and prescribe means reasonably designed to prevent such acts, practices and courses of business. The Commission adopted rule 206(4)-6 [17 CFR 275.206(4)-6] under the Advisers Act to address an investment adviser’s fiduciary obligation to clients who have given the adviser authority to vote their proxies. Under the rule, an investment adviser that exercises voting authority over client securities is required to: (i) adopt and implement policies and procedures that are reasonably designed to ensure that the adviser votes securities in the best interest of clients, including procedures to address any material conflict that may arise between the interest of the adviser and the client; (ii) disclose to clients how they may obtain information on how the adviser has voted with respect to their securities; and (iii) describe to clients the advisers proxy voting policies and procedures and, on request, furnish a copy of the policies and procedures to the requesting client.

Rule 206(4)-6 contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.¹ The title of this collection is “Rule 206(4)-6” and the Commission previously submitted this collection to the Office of Management and Budget

¹ 44 U.S.C. 3501 to 3520.

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(“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved, and subsequently extended, this collection under control number 3235-0571 (expiring on July 31, 2008). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. This collection of information is codified at 17 CFR 275.206(4)-6 and is mandatory. The respondents are investment advisers registered with the Commission that vote proxies with respect to clients’ securities. This collection of information is necessary to permit advisory clients of these investment advisers to use the information collected to assess investment advisers’ proxy voting policies and procedures and to monitor the advisers’ performance of its proxy voting activities. Responses to the disclosure requirement are not kept confidential.

2. Purposes of the Information Collection

The rule is designed to assure that advisers that vote securities for their clients vote those securities in their clients’ best interest and provide clients with information about how their securities were voted. As discussed in Item 1 (above), advisory clients use the information required by rule 206(4)-6 to assess investment advisers’ proxy voting policies and procedures and to monitor the advisers’ performance of its proxy voting activities. The information required by Rule 204-2 also is used by the Commission staff in its examination and oversight program. Without the information collected under the rules, advisory clients would not have information they need to assess the adviser’s services and monitor the adviser’s handling of their accounts, and the Commission would be less efficient and effective in its programs.

3. Role of Improved Information Technology

The collection of information requirements under rule 206(4)-6 take the form of (1) writing policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of clients, (2) disclosing how clients may obtain information on how the adviser has voted their proxies, and (3) describing to clients information about the adviser's proxy voting procedures and policies. Accordingly, the Commission's use of computer technology may have little effect. The Commission, however, does currently permit advisers to maintain the records related to their proxy voting policies and to how they have voted client proxies through the use of electronic media.²

4. Efforts to Identify Duplication

The requirements of rule 206(4)-6 are not duplicated elsewhere for those investment advisers that must comply with the rule. Rule 204-3 under the Advisers Act [17 CFR 275.204-3] requires investment advisers to furnish certain information to clients and prospective clients by providing either a copy of Part II of Form ADV [17 CFR 279.1], the investment adviser registration form, or a written brochure containing at least the information required by Part II of Form ADV. The requirement to describe the adviser's proxy voting policies and procedures and disclose how a client can obtain information from the adviser on how it voted client securities could be satisfied by adding this information to the adviser's brochure. Part II of Form ADV does not currently require advisers to describe their proxy voting policies and procedures or to

² These records are separately required under the Advisers Act recordkeeping rule 204-2 [17 CFR 275.204-2].

disclose how a client can obtain information from the adviser on how the adviser voted client securities.³

5. Effect on Small Entities

All advisers, regardless of their size, are equally subject to the collection requirements. The requirements of rule 206(4)-6 apply equally to all investment advisers that are registered with the Commission and vote proxies on behalf of their clients, including those advisers that are small entities. It would be incompatible with the objectives of the rule to exempt small entities from these requirements, which are designed to ensure clients are afforded the full protections attendant to an adviser's fiduciary duties as recognized by the Adviser's Act when an adviser is voting their proxies. Nevertheless, in designing the rule, the Commission took an approach that permits small firms to implement the rule in whatever manner is least burdensome in light of their particular circumstances. The Commission drafted rule 206(4)-6 to permit each firm subject to the rule to design and structure its own policies and procedures in light of the firm's operational structure and the particular types of conflicts encountered by the firm in connection with its unique business and clients.

6. Consequences of Less Frequent Collection

Less frequent information collection would be incompatible with the objectives of rule 206(4)-6. For example, if the information required by the rule were to be either not collected or

³ However, in April of 2000, the SEC proposed amendments to Form ADV that would require investment advisers that vote client proxies to provide this information. Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Investment Advisers Act Release No. 1862 (April 5, 2000) [65 FR 20524 (April 17, 2000)]. In connection with this April 2000 proposal, when the SEC obtained OMB approval for our amendments to the Form ADV collection that would result from the proposed changes to Form ADV, the Commission included the paperwork burden of describing any proxy voting policies and procedures in a firm's brochure. This burden was approved in a collection titled "Form ADV," under control number 3235-0049. The proposal to amend Form ADV, Part II is still pending.

collected less frequently, both the Commission's ability to protect investors and the ability of advisory clients to assess and monitor advisers' proxy voting practices would be reduced.

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

The collection of information imposes no additional requirements regarding record retention.⁴

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 206(4)-6 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in responses to its request. The Commission and the staff of the Division of Investment Management also 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.

9. Payment or Gift to Respondents

Not applicable.

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As discussed in Item 3 (above) records related to an adviser's proxy voting policies and procedures and proxy voting history are separately required under the Advisers Act recordkeeping rule 204-2. 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. Rule 204-2(e). 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 retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Investment Advisers Act.

10. Assurance of Confidentiality

Rule 206(4)-6 requires investment advisers to make certain disclosures to their clients.

These responses are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

Rule 206(4)-6 requires an investment adviser that votes client securities to adopt written policies reasonably designed to ensure that the adviser votes in the best interests of clients, and requires the adviser to disclose to clients information about those policies and procedures. For purposes of estimating the paperwork burden for investment advisers under rule 206(4)-6, we estimate that the number of investment advisers subject to collection of information requirements under the rule is 9,166.⁵ We further estimate that each of these advisers is required to spend on

average 10 hours annually documenting its proxy voting procedures under the requirements of the proposed rule, for a total burden of 91,660 hours.⁶

⁵ Based on records of information submitted to the Commission by investment advisers in Part 1 of Form ADV, 9,166 of the 10,817 total investment advisers registered with the Commission report that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis. Because Part 1 of ADV does not require investment advisers to describe whether they vote proxies on behalf of clients, for purposes of this estimate, we infer that these advisers vote proxies on behalf of one or more clients in connection with providing discretionary asset management services.

⁶ $9,166 \times 10 = 91,660$

The rule also requires these advisers to describe their proxy voting policies and procedures to clients. The attendant paperwork burden is already incorporated in a collection titled “Form ADV,” which is currently approved by OMB under control number 3235-0049.⁷ Although, as discussed above, advisers are not currently required to make disclosures concerning their proxy voting policies and procedures in their Form ADV, we anticipate that advisers will incorporate these disclosures into their Form ADV for the sake of convenience. In addition, the rule requires these investment advisers to provide copies of their proxy voting policies and procedures to clients upon request. Based on information submitted to the Commission by SEC-registered investment advisers, we estimate that SEC-registered advisers have, on average, 1,013 clients each. However, we estimate that, on average, at least 90 percent of each adviser’s clients would find the adviser’s description of its policies sufficiently informative, and at most ten percent, or 101 clients of each adviser on average, would request copies of the underlying policies and procedures.⁸ We estimate that it would take these advisers 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 92,577 hours.⁹

Accordingly, we estimate that rule 206(4)-6 results in an annual aggregate burden of collection for SEC-registered investment advisers by a total of 184,237 hours.¹⁰

⁷ See supra note Error: Reference source not found.

⁸ $1,013 \times 10\% = 101.3$

⁹ $0.1 \times 101 \times 9,166 = 92,576.6$

¹⁰ $91,660 + 92,577 = 184,237$

We believe that investment advisers use compliance professionals to document their firms' proxy voting policies and procedures. We estimate the hourly wage for compliance professionals to be \$245, including benefits. Additionally, we believe that investment advisers use clerical staff to deliver copies of proxy voting policies in response to clients' requests. We estimate the hourly wage for clerical staff to be \$41, including benefits. Accordingly, we estimate the annual aggregate cost of collection to be \$26,252,357.¹¹

13. Estimate of Total Annual Cost Burden

We do not anticipate that rule 206(4)-6 will impose any non-labor costs.

14. Estimate of Cost to the Federal Government

There are no additional costs to the federal government.

15. Explanation of Changes in Burden

We have revised the estimated burden based on new information with respect to the number of SEC-registered investment advisers that would be subject to the collection of information. This new information is based on data derived from information submitted by advisers on Form ADVs filed through the IARD. The number of responses per investment adviser and the number of hours per response have not changes since the last estimate. The increase in hour burden is entirely due to an increase in the estimated number of respondents.

16. Information Collection Planned for Statistical Purposes

Not applicable.

¹¹ Data from the SIA's Report on Office Salaries in the Securities Industry 2006 (the "SIA Report") suggest that the cost for a Compliance Manager is approximately \$245 per hour. Data from the SIA Report suggest that the cost for a General Clerk is approximately \$41 per hour. $(91,660 \text{ hours} \times \$245 \text{ per hour}) + (92,577 \text{ hours} \times \$41 \text{ per hour}) = \$26,252,357$

17. Approval to not Display Expiration Date

Not applicable.

18. Exception to Certification Statement

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.