

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 203A-5

A. JUSTIFICATION

1. Necessity of Information Collection

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 In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)² amended section 203A to prohibit from Commission registration an investment adviser that has assets under management between \$25 million and \$100 million (a “mid-sized adviser”), 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

The Commission adopted rule 203A-5 to provide for a transitional process by which an adviser no longer eligible for Commission registration would transition to state registration. The rule required each investment adviser registered with the Commission

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.*

on January 1, 2012 to file an amendment to its Form ADV no later than March 30, 2012.⁴ Each adviser was required to amend its Form ADV to declare whether it remained eligible for Commission registration and to report the market value of its assets under management determined within 90 days of the filing.⁵ An adviser no longer eligible for Commission registration was required to withdraw its Commission registration by filing Form ADV-W no later than June 28, 2012.⁶ The rule does not contain any continuing requirements after the June 28, 2012 withdrawal deadline.

The rule's requirement to file an amendment to Form ADV was a "collection of information" for Paperwork Reduction Act ("PRA") purposes. The title of the collection of information is: "Rule 203A-5." The respondents to this information collection were all investment advisers registered with the Commission on January 1, 2012. This collection of information has been approved by the OMB under control number 3235-0688. 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 OMB control number. This collection of information is found at 17 CFR 275.203a-5 and is mandatory. The information collected on Form ADV is not kept confidential.

2. Purposes and Use of Information Collection

The rule does not require information to be collected after the June 28, 2012

⁴ Rule 203A-5(b). Advisers registered with the Commission on July 21, 2011 that had at least \$25 million in assets under management were exempt from the new prohibition on Commission registration for mid-sized advisers until 2012, when the rule required them to switch to state registration and withdraw their SEC registration. *See* rule 203A-5(a).

⁵ *See* rule 203A-5(b).

⁶ Rule 203A-5(c)(1). The rule also permits 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. Rule 203A-5(c)(2).

withdrawal deadline. The Form ADV filing required by rule 203A-5 enabled investment advisers to determine in 2012 whether they met the revised eligibility criteria for Commission registration, and provided 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.⁷

3. Consideration Given to Information Technology

Investment advisers 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. The deadlines for information collected pursuant the rule were March 30, 2012 (for Form ADV amendments) and June 28, 2012 (for withdrawals). The Commission is no longer collecting any information pursuant to the rule.

4. Duplication

The collection of information requirements of rule 203A-5 are not duplicated elsewhere for investment advisers that were required to comply with the collection requirements. The Commission is no longer collecting any information pursuant to the rule.

5. Effect on Small Entities

⁷ Amended Item 2.A. of Form ADV, Part 1A reflects the requirements of the Advisers Act (as amended by the Dodd-Frank Act) and the related rules, and requires an investment adviser to mark Item 2.A.(13) if the adviser is no longer eligible to remain registered with the Commission.

The requirements of rule 203A-5 are the same for all investment advisers registered with the Commission on January 1, 2012, including those advisers that were small entities as of that date. The Commission is no longer collecting any information pursuant to the rule, thus the rule no longer affects any advisers regardless of size.

6. Consequences of Not Conducting Collection

Rule 203A-5 required each investment adviser registered with the Commission on January 1, 2012 to file an amendment to its Form ADV that, among other things, required each adviser to declare whether it remained eligible for Commission registration and to report the market value of its assets under management determined within 90 days of filing. The deadlines for the information collected pursuant the rule were March 30, 2012 (for Form ADV amendments) and June 28, 2012 (for withdrawals). The Commission is no longer collecting any information pursuant to the rule.

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

Not applicable.

8. Consultations Outside of the 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. The Commission is no longer collecting any information pursuant to the rule.

The Commission requested public comment on these collections of information requirements before it submitted this request for extension and approval to OMB. The

Commission received no comments in response to its request.

9. Payment or Gift

None.

10. Confidentiality

The information collected pursuant to rule 203A-5 was provided through Form ADV filings with the Commission. These disclosures are not kept confidential. The deadlines for information collected pursuant the rule were March 30, 2012 (for Form ADV amendments) and June 28, 2012 (for withdrawals). The Commission is no longer collecting any information pursuant to the rule.

11. Sensitive Questions

Not applicable/No PII collected.

12. Burden of Information Collection

The current approved burden for rule 203A-5 is 49,323 hours, based on an estimated 3,900 respondents filing an amendment to Form ADV. The deadlines for information collected pursuant the rule were March 30, 2012 (for Form ADV amendments) and June 28, 2012 (for withdrawals). The Commission is no longer collecting any information pursuant to the rule. Accordingly, the staff estimates that there will be no further burden associated with the rule. Although Commission staff estimates that there is no further burden associated with rule 203A-5, the staff is requesting a one hour burden for administrative purposes.

13. Costs to Respondents

\$0.

14. Costs to the Federal Government

\$0.

15. Changes in Burden

As the requirements of the rule are no longer applicable, the one-time total burden of 49,323 hours is also no longer applicable. The deadlines for information collected pursuant the rule were March 30, 2012 (for Form ADV amendments) and June 28, 2012 (for withdrawals).

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date.

18. Exception to Certification for Paperwork Reduction Act Submissions

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.