

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Exemption for Certain Multi-State Investment Advisers (Rule 203A-2(d))

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 is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Securities and Exchange Commission (“Commission” or “SEC”) unless that adviser has at least \$25 million in assets under management or advises a Commission-registered investment company.¹ Section 203A also prohibits from Commission registration an adviser that: (i) has assets under management between \$25 million and \$100 million; (ii) is required to be registered as an investment adviser with the state in which it maintains its principal office and place of business; and (iii) if registered, would be subject to examination as an adviser by that state (a “mid-sized adviser”).² A mid-sized adviser that otherwise would be prohibited may register with the Commission if it would be required to register with 15 or more states.³ Section 203A(c) of the Advisers Act authorizes the Commission to exempt an adviser from the prohibition on Commission registration if the prohibition would be

¹ 15 U.S.C. 80b-3a.

² See section 410 of the Dodd-Frank Act. The Commission also adopted a rule that raised the threshold above which a mid-sized investment adviser must register with the Commission to \$110 million; but, once registered with the Commission, an adviser need not withdraw its registration until it has less than \$90 million of assets under management. Rule 203A-1(a)(1).

³ See 15 U.S.C. 80b-3a(2). A mid-sized adviser also will be required to register with the Commission if it is an adviser to a registered investment company or business development company under the Investment Company Act. *Id.*

“unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes” of section 203A of the Act.⁴ Under this authority, the Commission adopted rule 203A-2 to provide certain types of advisers with exemptions from the prohibition on registration.

Rule 203A-2(d) provides that the prohibition on registration with the Commission does not apply to an investment adviser that is required to register in 15 or more states. Once registered with the Commission, the adviser remains eligible for Commission registration as long as it would be obligated, absent the exemption, to register in at least 15 states.⁵ An investment adviser relying on this exemption also must: (i) include a representation on Schedule D of Form ADV that the investment adviser has concluded that it must register as an investment adviser with the required number of states; (ii) undertake to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that it would be required by the laws of fewer than 15 states to register as an investment adviser with the state; and (iii) maintain in an easily accessible place a record of the states in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV relying on the rule.⁶ The rule’s record maintenance requirement is a “collection of information” for Paperwork Reduction Act (“PRA”) purposes.⁷

⁴ 15 U.S.C. 80b-3a(c).

⁵ 17 CFR 275.203A-2(d)(1).

⁶ 17 CFR 275.203A-2(d)(2)-(3). The five-year record retention period is a similar recordkeeping retention period as imposed on all SEC-registered advisers under rule 204-2 of the Advisers Act. *See* rule 204-2 (17 CFR 275.204-2).

⁷ The PRA burden for Form ADV reflects the required representations on Schedule D of Form ADV. *See* Appendix A, section VI.B.

Respondents to this collection of information are investment advisers required to register in 15 or more states absent the exemption that rely on rule 203A-2(d) to register with the Commission. The records kept by investment advisers in compliance with the rule are necessary for the Commission staff to use in its examination and oversight program.

The title of the collection of information is: “Exemption for Certain Multi-State Investment Advisers (Rule 203A-2(d)).” Its currently approved OMB control number is 3235-0689. 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 codified at 17 CFR 275.203a-2(d) and is mandatory to qualify for and maintain Commission registration eligibility under rule 203A-2(d). Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential under section 210(b) of the Advisers Act.⁸

2. Purpose and Use of Information Collection

The information collected under rule 203A-2(d) permits the Commission’s examination staff to determine an adviser’s eligibility for registration with the Commission under this exemptive rule.

3. Consideration Given to Information Technology

An investment adviser registering or registered with the Commission under rule 203A-2(d) is required to maintain in an easily accessible place a record of the states in which the investment adviser has determined it would, but for the exemption, be required

⁸ 15 U.S.C. 80b-10(b).

to register for five years from the filing of a Form ADV.⁹ Advisers are permitted to meet the recordkeeping obligation under the rule micrographically or electronically, and their storage of this required record in such media is governed by Advisers Act rule 204-2(g).¹⁰

4. Duplication

The recordkeeping requirement of rule 203A-2(d) is not duplicated elsewhere for investment advisers that must comply with this collection requirement.

5. Effect on Small Entities

The collection of information requirements are the same for all investment advisers registering or registered with the Commission, including those that are small entities. Under section 203A, advisers with assets under management of less than \$100 million generally are not eligible to register with the Commission; however, under rule 203A-2(d), these entities, which include small entities, are permitted to register with the Commission if they meet the conditions of the rule. The recordkeeping requirement under the rule affects small advisers and larger advisers similarly, because the required information is about the adviser maintaining the records and about its regulatory requirements and business, which should be readily available to any adviser regardless of size. It would defeat the purpose of the rule to exempt small entities from these

⁹ Rule 203A-2(d)(3).

¹⁰ 17 CFR 275.204-2(g). Rule 204-2 requires that the record be arranged and indexed in a way that permits easy location, access, and retrieval of any particular record, 17 CFR 275.204-2(g)(2)(i)-(ii), and that the micrographic or electronic duplicate of the record be separately stored for five years, 17 CFR 275.204-2(g)(2)(iii). An investment adviser must establish and maintain procedures to keep the required records so as to reasonably safeguard the records from loss, alteration, or destruction; to limit access to the records to properly authorized personnel and the Commission; and to reasonably ensure any reproduction of a non-electronic original is complete, true, and legible when retrieved. See 17 CFR 275.204-2(g)(3).

requirements. Moreover, although the records are mandatory, the rule is a permissive exemption. A small adviser can choose not to rely on the rule and thus not be subject to the collection of information.

6. Consequences of Not Conducting Collection

An adviser registering with the Commission under rule 203A-2(d) is required to maintain a record of the states in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV.¹¹ 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 period between examinations. If the required information is not collected, the Commission's examiners would not be able to verify that an investment adviser's reliance on rule 203A-2(d) in registering with the Commission was appropriate.

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

Rule 203A-2(d) includes a recordkeeping provision under which an adviser relying on the rule to register with the Commission is required to maintain certain information, specified more fully in Item 1 above, for five years. Although this period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2)(iv), the long-term retention of these records is designed to contribute to the effectiveness of the Commission's examination and inspection program, and is necessary for the Commission's inspection program to determine compliance with the Advisers Act, including an adviser's continued eligibility to register with the Commission. Because the

¹¹ Rule 203A-2(d)(3).

period between examinations may be as long as five years, it is important that the Commission have access to records that cover the period between examinations.

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 requested public comment on the collection of information requirements in rule 203A-2(d) before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request.

9. Payment or Gifts

None.

10. Confidentiality

Responses to the recordkeeping responses required under rule 203A-2(d) in the context of the Commission's examination and oversight program are generally kept confidential.¹²

11. Sensitive Questions

Not applicable/No PII collected.

12. Burden of Information Collection

As of March 16, 2020, there were approximately 99 advisers relying on the exemption under rule 203A-2(d).¹³ Although it is difficult to determine a precise number

¹² See Section 210(b) of the Advisers Act.

of advisers that will rely on the exemption because such reliance is entirely voluntary, we estimate that approximately 106 advisers will rely on the exemption.¹⁴ These advisers will incur an average one-time initial burden of approximately 8 hours, and an average ongoing burden of approximately 8 hours per year, to keep records sufficient to demonstrate that they meet the 15-state threshold. These estimates are based on an estimate that each year an investment adviser will spend approximately 0.5 hours creating a record of its determination whether it must register as an investment adviser with each of the 15 states required to rely on the exemption, and approximately 0.5 hours to maintain these records.¹⁵ Accordingly, the total initial and annual burden of the recordkeeping requirements of rule 203A-2(d) will be 848 hours.¹⁶

We anticipate that investment advisers will likely utilize senior operations managers to maintain the required records. The Commission estimates the hourly wage rate for a senior operations manager to be \$368 per hour, including benefits.¹⁷ Each

¹³ Based on IARD data as of March 27, 2020, of the approximately 13,540 SEC-registered advisers, 99 checked Item 2.A.(10) of Part 1A of Form ADV to indicate their basis for SEC registration under the multi-state advisers rule.

¹⁴ For purposes of this analysis, we estimate that approximately 1,000 investment advisers will register with the SEC in the upcoming year. In addition, approximately 0.73% (99 SEC-registered investment advisers currently relying on the multi-state exemption ÷ 13,540 currently SEC-registered investment advisers) of all SEC-registered investment advisers currently rely on the multi-state exemption. To determine the number of newly-registered investment advisers that will rely on the multi-state exemption in 2020, we multiplied the estimated 1,000 investment advisers who will register in 2020 by 0.73% to reach an estimate of 7. As a result, we estimate that approximately 106 advisers will rely on the exemption (99 advisers currently relying on it + estimated 7 eligible newly-registered investment advisers).

¹⁵ 0.5 hours x 15 states = 7.5 hours + 0.5 hours = 8 hours.

¹⁶ 106 advisers relying on the exemption x 8 hours = 848 hours.

¹⁷ The hourly wage figures from the Securities Industry Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by

adviser relying on the exemption will incur average initial and annual recordkeeping costs associated with rule 203A-2(d) of \$2,944 per adviser.¹⁸ The Commission staff estimates that the total recordkeeping costs will be approximately \$312,064 per year.¹⁹ The table below summarizes our PRA annual burden estimates associated with rule 203A-2(d).

RULE 203A-2(D) PRA ESTIMATES

	Hour burden		Wage rate ¹	Internal time costs	
Revise fee table and fee and expense terminology	7.5 hours	×	\$368 (rate for senior operations manager)	\$2,760	
Revise risk disclosures	0.5 hours	×	\$368 (rate for senior operations manager)	\$184	
Total new annual burden per adviser	8 hours			\$2,944	
Number of advisers	×	106 advisers		×	106 advisers
Revised burden estimates	848 hours			\$312,064	
Current burden estimates	1,216 hours			\$386,240	

Notes:

1. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

13. Cost to Respondents

Excluding the burden hours identified in Item 12, the collection of information requirement for rule 203A-2(d) is not expected to impose additional non-labor or capital

5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that the hourly rate for this position is \$368.

¹⁸ 8 hours x \$368 = \$2,944.

¹⁹ [7 advisers newly relying on the exemption x \$2,944] + [99 advisers currently relying on the exemption x \$2,944] = \$20,608 + \$291,456 = \$312,064.

costs. The Commission anticipates that most advisers registering under the rule will generate the necessary records in the ordinary conduct of their advisory businesses.

14. Cost to the Federal Government

There are no costs to the federal government directly attributable to rule 203A-2(d).

15. Change in Burden

We have revised the estimated annual aggregate burden from 1,136 hours to 848 hours based on new information on the number of SEC-registered investment advisers that we obtained from Form ADVs filed through the IARD. The number of responses per investment adviser and the number of hours per response have not changed since the last estimate. The decrease in hour burden is due to a decrease in the estimated number of respondents.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exception to Certification Requirement for Paperwork Reduction Act Submission

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.