SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for RULE 206(3)-2

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 206(3) of the Investment Advisers Act of 1940 (15 U.S.C 80b-6(3)) ("Advisers Act" or "Act") makes it unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

> [A]cting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.

This specific conflict of interest provision addresses instances in which an adviser deals with an advisory client as a principal, as well as instances when an adviser acts as agent for another. Principal transactions occur when the adviser sells securities it owns to the client or when it buys securities from the client for its own account. Agency cross transactions occur when an adviser acts as broker to both the advisory client and the opposite party to the transaction. Section 206(3) of the Advisers Act requires an investment adviser to obtain a client's consent in writing prior to engaging in any principal or agency cross transaction.

The Securities and Exchange Commission (the "Commission" or "SEC") adopted rule 206(3)-2 (17 CFR 275.206(3)-2) to permit investment advisers to enter into agency cross transactions under section 206(3) if certain conditions are met.[1] Rule 206(3)-2 permits an adviser to obtain a blanket consent from a client for agency cross transactions, provided the adviser furnishes certain specified information to the client at specified times. The information requirements of the rule consist of the following: (a) prior to obtaining the client's consent, appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (b) at or before the completion of any such transaction the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (c) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission adopted rule 206(3)-2 under the authority of sections 206(3) and 211(a) (15 U.S.C. 80b-3, 80b-11(a)) of the Advisers Act. The premise of rule 206(3)-2 is that appropriate disclosure of agency cross transaction practices is made in advance and that a client is furnished with information as to each transaction immediately after it occurs. The overreaching that section 206(3) is designed to prevent can thereby be sufficiently minimized so that the adviser need not obtain a client's consent prior to entering into each agency cross transaction as otherwise would be required by section 206(3). Accordingly, the information requirements of rule 206(3)-2 are necessary to make the rule consistent with investor protection.

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[1] Agency Cross Transactions for Advisory Clients, Investment Advisers Act Release No. 589 (June 1, 1977). Section 206 (15 U.S.C. 80b-6) applies to all investment advisers as defined in section 202(a)(11) (15 U.S.C. 80b-2(a)(11)) regardless of whether such advisers are required to be registered. Rule 206(3)-2 (17 CFR 275.206(3)-2) formerly was available only to registered investment advisers, however, the rule was amended in 1997 to make it available to all investment advisers in light of changes to the registration provisions of the Advisers Act under the National Securities Markets Improvement Act of 1996. Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997).

Disclosure regarding the practice of agency cross transactions apprises the client of the inherent conflicts of interest involved in such transactions. Disclosure regarding each transaction upon its completion permits the client to review each transaction to determine whether the terms of the transaction should be challenged as unfair or the blanket consent should be revoked. Similarly, annual disclosure of all such transactions permits the client to make an informed judgment as to whether to continue the consent.

2. Purpose and Use of the Information Collection

Clients of investment advisers primarily use the information collected for the purpose of monitoring agency cross transactions as described in Item 1, above. In addition, Commission staff reviews the information during its routine investment adviser inspections to assess compliance with the rule.

3. Consideration Given to Information Technology

Investment advisers are permitted to provide to clients the information required by rule 206(3)-2 electronically.[2]

4. Duplication

The collection of information requirements of the rule are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of rule 206(3)-2 apply equally to all investment advisers, including small entities. The rule functions as a safe harbor which small entities may choose to use for affecting an agency cross transaction without having to obtain specific prior consent from the

[2] Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1932, and Investment Company Act of 1940, Investment Advisers Act Release No. 1562 (May 9, 1996).

client. Exempting small entities would defeat the rule's purpose and deprive them of the benefits of the rule. No reasonable alternative exists that would permit the Commission to afford special treatment to small entities while continuing to protect investors.

6. Consequences of Not Conducting Collection

Information must be given to a client at the following times: (a) before the adviser engages in any agency cross transaction with respect to the client's account, so the client can consent to prospective transactions; (b) at or before completion of each agency cross transaction to give the client the opportunity to evaluate the transaction; (c) at least annually, to summarize all agency cross transactions since the adviser gave the last such summary. Less frequent reporting would not give a client adequate opportunity to evaluate an adviser's actions or the corresponding inherent conflicts associated with agency cross transactions.

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

The rule itself imposes no additional requirements regarding record retention. However, SEC-registered investment advisers may otherwise be required to maintain and preserve certain information required under rule 206(3)-2 for at least five (5) years. Rule 204-2 under the Advisers Act (17 CFR 275.204-2) generally requires that registered investment advisers maintain certain records for not less than five years, including (a) written communications received and sent by the adviser relating to its recommendations and the placing or execution of any order to purchase or sell any security, and (b) all written agreements entered into by the investment adviser with any client.

The long-term retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Advisers Act.

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 206(3)-2 before submitting this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

In addition, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser industry through public conferences, meetings, as well as informal exchanges. These various forums provide the Commission and the staff with a mechanism to ascertain and act upon paperwork burdens confronting the industry.

9. Payment or Gift

Not applicable.

10. Confidentiality

The information collected pursuant to the rule takes the form of disclosures made by advisers to their clients. These disclosures are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Burden of Information Collection

The reporting burden will vary depending upon the number of clients for which an adviser enters into agency cross transactions and the number of such transactions. The currently-approved annual aggregate burden of the collection under rule 206(3)-2 is 7,424 hours. This approved annual aggregate burden was based on information about the number of registered advisers who reported in their Form ADV filings as of December 1, 2014 that they or an affiliate engage in agency cross transactions. We are updating those prior calculations based on current information about the number of registered advisers who reported in their Form ADV filings as of December 31, 2021 that they or an affiliate engage in agency cross transactions. Based on current data, we estimate that approximately 378 SEC-registered investment advisers use rule 206(3)-2.[3]

We are also updating, based on current information, the number of clients for whom the investment adviser engages in agency cross transactions. We estimate that each adviser relying on the rule has an average of 22 clients who receive confirmation statements and annual statements for agency cross transactions and that each of those clients receive approximately 2 confirmation statements per year. Thus, each adviser relying on the rule annually will prepare 44 confirmation statements for agency cross transactions[4] and 22 annual statements. Also, we estimate that an adviser would be required to provide disclosure to 2 clients per year in connection with obtaining the initial consent to engage in agency cross transactions.[5] These

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3 This estimate is based on information reported by advisers through the Investment Adviser Registration Depository ("IARD"). Based on IARD data as of December 31, 2021, of the approximately 13,987 SEC-registered advisers, 378 responded "yes" to Form ADV, Part 1A, Item 8.B.1, a question pertaining to agency cross transactions. This represents approximately 2.7% of total population of SEC-registered advisers.

4 22 clients x 2 agency cross transactions per client = 44 confirmation statements.

5 We have updated our estimate of the number of clients to whom an investment adviser engages in agency cross transactions from 16 clients to 22 clients. This revised estimate is based on an analysis of the change in the median number of clients reported by investment advisers who indicated in response to Form ADV, Part 1A, Item 8.B.1, that the investment adviser engages in agency cross transactions. This estimate was calculated, using IARD data, as follows: estimated median number of clients reported as of December 31, 2003 (the last time an analysis of this estimate was performed, establishing 10 clients as the estimate): 100; estimated median number of clients reported as of December 31, 2017: 137 . Increase in estimated median number of clients: 137 - 100 = 37 (37% increase). Prior estimate: 16 clients x 1.37 (pro rata increase) = approximately 22 clients. We are not aware of other data suggesting revisions to the estimates of

estimates result in an average of 50 responses per respondent each year for a total of 18,900 responses annually.[6] Based on the estimate that each of these responses requires one half an hour, we estimate a burden amounting to 9,450 hours per year.[7] This amounts to a decrease of 1, 200 hours from December 1, 2014 estimates.

Compliance attorneys and compliance clerks are likely to prepare and deliver these documents. We estimate that approximately 75 percent of these burden hours will be performed by clerical employees and about 25 percent will be performed by compliance attorneys. Based upon an average cost of $72 per hour for a compliance clerk and an average cost of $373 per hour for a compliance attorney,[8] the total cost of the information collection requirements of Rule 206(3)-2 is estimated at approximately $1,391,513 annually.[9] 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.

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the number of responses per client.

6 378 advisers x 50 annual responses = 18,900 responses per year.

7 18,900 responses x 0.5 hours per response = 9,450 hours per year.

8 The figure of $72 per hour for a Compliance Clerk is from the SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The figure of $373 per hour is based on reported industry wages for a Compliance Attorney taken from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

9 (0.75 x 9,450 x $72) + (0.25 x 9,450 x $373) = $510,300+ $881,213 = $1,391,513. This cost estimate is higher than that previously submitted in connection with this collection. This increase in estimated cost results primarily from a combination of a decrease in the number of advisers using the rule annually and an increase in the estimate of the number of clients for

IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			External Cost to Respondents	
	Previously approved	*Requested*	*Change*	*Previously approved*	*Requested*	*Change*	*Previously approved*	*Requested*
Rule 206(3)-2	426	378	-48	10,650	9,450	-1200	$0	$0

13. Cost to Respondents

It is estimated that there is no cost burden for the rule, excluding any cost of the burden hours as identified in Item 12 above.

14. Cost to the Federal Government

There are no costs to the federal government directly attributable to Rule 206(3)-2.

15. Changes in Burden

As discussed in Item 12 above, the number of respondents has decreased from approximately 426 investment advisers to approximately 378 investment advisers. In addition, the number of clients for whom the investment adviser engages in agency cross transactions has increased from approximately 16 clients to approximately 22 clients (although the number of responses and hours per response have not changed since the last estimate). Accordingly, the total burden hours for all respondents has decreased from 10,650 hours to 9,450 hours. The decreased burden reflects the net effect of a decrease in the estimated number of investment advisers relying on the rule and an decrease in the estimated number of clients for whom the investment adviser engages in agency cross transactions, since the last extension request.

16. Information Collection Planned for Statistical Purposes

Not applicable.

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whom an adviser engages in agency cross transactions.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.