

**SUPPORTING STATEMENT****For the Paperwork Reduction Act Information Collection Submission for  
Proposed Amendments to Rule 203A-2(e)****A. JUSTIFICATION****1. Necessity for the Information Collection**

Section 203A of the Investment Advisers Act of 1940 (“Advisers Act” or “Act”) prohibits certain advisers from registering with the Securities and Exchange Commission (the “Commission”) under the Act. In general, a small adviser with less than \$25 million in assets under management that is regulated or required to be regulated as an adviser in the state where it maintains its principal office and place of business, and a mid-sized adviser with between \$25 million and \$100 million in assets under management that is required to be registered as an adviser in the state where it maintains its principal office and place of business and that is subject to examination by its state securities commission, are not eligible to register with the Commission.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Section 203A(c) of the Advisers Act also authorizes the Commission to exempt an adviser from the prohibition on Commission registration if the prohibition would be “unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes” of section 203A of the Act.<sup>4</sup>

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<sup>1</sup> 15 U.S.C. 80b-3a(a).

<sup>2</sup> *See id.*

<sup>3</sup> *See id.*

<sup>4</sup> 15 U.S.C. 80b-3a(c).

Under this authority, the Commission adopted rule 203A-2 in 1997 to provide certain types of advisers with exemptions from the prohibition on registration. Rule 203A-2 was amended by the Commission in 2002 when it adopted an exemption for internet investment advisers,<sup>5</sup> and was amended again in 2011 when, among other changes, the internet investment adviser exemption was redesignated as subsection (e) of Rule 203A-2.<sup>6</sup>

Rule 203A-2(e) exempts from the prohibition on Commission registration an Internet investment adviser who (1) provides investment advice to all of its clients exclusively through computer software-based models or applications termed under the rule as “interactive websites”<sup>7</sup> and (2) maintains in an easily accessible place, for a period of not less than five years from the filing of a Form ADV,<sup>8</sup> a record demonstrating that the adviser provides investment advice to its clients exclusively through an interactive website in accordance with the rule. Rule 203A-2(e)’s record maintenance requirement

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<sup>5</sup> See Exemption for Certain Investment Advisers Operating Through the Internet, Investment Advisers Act Release No. 2091 (December 12, 2002) (67 F.R. 77620 (Dec. 18, 2002)).

<sup>6</sup> See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011) (76 FR 42950 (July 19, 2011)). The Commission did not make substantive amendments to the internet investment adviser exemption as part of this rulemaking. Other exempted advisers under Rule 203A-2 include: (1) pension consultants that provide investment advice to employee benefit plans with respect to assets of plans having an aggregate value of at least \$200 million during the adviser’s last fiscal year; (2) an adviser that controls, is controlled by, or is under common control with a Commission-registered adviser if the two advisers have the same principal office and place of business; (3) a newly formed adviser with a reasonable expectation that it would be eligible for Commission registration within 120 days after its registration has become effective with the Commission; and (4) an adviser required to register with the securities authorities in at least 15 states. 17 CFR 275.203A-2.

<sup>7</sup> 17 CFR 275.203A-2(e). Included in rule 203A-2(e) is a limited exception to the interactive website requirement which allows these advisers to provide investment advice to fewer than 15 clients through other means on an annual basis. 17 CFR 275.203A-2(e)(1)(i). The rule also precludes advisers in a control relationship with an SEC-registered internet investment adviser from registering with the Commission under the common control exemption provided by rule 203A-2(b) (17 CFR 275.203A-2(b)).

<sup>8</sup> 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 Adviser Act. See rule 204-2 (17 CFR 275.204-2).

is a “collection of information” for Paperwork Reduction Act (“PRA”) purposes. The title for the collection of information is “Exemption for Certain Investment Advisers Operating Through the Internet (Rule 203A-2(e))”. This collection of information is necessary for use by the Commission staff in its examination and oversight program. The collection of information for rule 203A-2(e) is currently approved under OMB control number 3235-0559 (expires May 31, 2026).

On July 26, 2023, the Commission proposed amendments to rule 203A-2(e).<sup>9</sup> The Commission proposed amendments that would require internet investment advisers relying on the exemption to at all times have an “operational” interactive website.<sup>10</sup> In addition, the Commission proposed amendments that would eliminate the de minimis exception in the current rule that permits internet investment advisers to have fewer than 15 non-internet clients in any 12-month period and amendments that would require internet investment advisers to have more than one client.<sup>11</sup> The Commission also proposed amendments to the requirement that the internet investment adviser retain in an easily accessible place, for a period of not less than five years from the filing of a Form ADV,<sup>12</sup> a record demonstrating that the adviser provides investment advice to its clients exclusively through an interactive website in accordance with the rule to reflect the proposed amendment that the adviser’s interactive website must be “operational.”<sup>13</sup>

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<sup>9</sup> Exemption for Certain Investment Advisers Operating Through the Internet Investment Advisers Act Release No. 6354 (Jul. 26, 2023) [88 FR 50076 (Aug. 1, 2023)].

<sup>10</sup> See proposed rule 203A-2(e)(1)(i).

<sup>11</sup> See *supra* note 7; proposed rule 203A-2(e)(1)(i); proposed rule 203A-2(e)(2)

<sup>12</sup> 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 Adviser Act. See rule 204-2 (17 CFR 275.204-2).

<sup>13</sup> Proposed 17 CFR 275.203(a)-2(e)(ii).

Respondents to this collection of information are advisers who provide investment advice through interactive websites and who rely on the exemption to register with the Commission. Providing this information is mandatory in qualifying for and maintaining Commission registration eligibility under rule 203A-2(e). 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.<sup>14</sup>

## **2. Purpose and Use of the Information Collection**

The information collected under rule 203A-2(e) permits the Commission's examination staff to determine an advisers' 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(e) would be required to maintain, in an easily accessible place, for five years from the filing of a Form ADV, a record that demonstrates that the adviser provides investment advice to its clients exclusively through an operational interactive website as defined under the rule.<sup>15</sup> 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).<sup>16</sup>

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<sup>14</sup> 15 U.S.C. 80b-10(b).

<sup>15</sup> 17 CFR 275.203A-2(e).

<sup>16</sup> 17 CFR 275.204-2(g). Rule 204-2(g) requires that the record be arranged and indexed in a way that permits easy location, access, and retrieval of any particular record, and that the micrographic or electronic duplicate of the record be separately stored for the time required by rule 204-2 to preserve the original record. See 17 CFR 275.204-2(g)(2). 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 that any reproduction of a non-electronic original record is complete, true, and legible when retrieved. See 17 CFR 275.204-2(g)(3).

#### **4. Duplication**

The recordkeeping requirement of rule 203A-2(e) 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 will not be eligible to register with the Commission. However, under rule 203A-2(e), these advisers 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 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 requirements.

#### **6. Consequences of Not Conducting Collection**

Less frequent information collection will be incompatible with the objectives of the rule and would hinder the Commission's oversight and examination program for internet investment advisers and thereby reduce the protection to investors.

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

Rule 203A-2(e) includes a recordkeeping provision under which an adviser relying on the rule to register with the Commission would be 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 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. Consultation Outside the Agency**

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 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. In addition, the Commission has requested public comment on the proposed amendments to rule 203A-2(e), including the collection of information requirements resulting from the proposed amendments. Before adopting these amendments, the Commission will receive and evaluate public comments on the proposed amendments and their associated collection of information requirements

#### **9. Payment or Gift**

Not applicable.

#### **10. Confidentiality**

Responses to the recordkeeping responses required under rule 203A-2(e) in the context of the Commission's examination and oversight program are generally kept confidential.<sup>17</sup>

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<sup>17</sup> See Section 210(b) of the Advisers Act. 15 U.S.C. 80b-10b.

## **11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

## **12. Burden of Information Collection**

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995 and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Rule 203A-2(e) would require advisers registering with the Commission under the exemption to maintain a record demonstrating that the adviser's advisory business has been conducted through an "operational" interactive website in accordance with the rule. Although most advisers registering under the rule usually generate the necessary records in the ordinary conduct of their Internet advisory business, the recordkeeping requirement of rule 203A-2(e) nonetheless may impose a small additional burden on these advisers. As under the current rule, under the proposed rule we continue to estimate that this recordkeeping burden should not exceed an average of four (4) hours annually per adviser. As of December 2022, 266 internet investment advisers were relying on the exemption and we estimate that 266 advisers will continue to rely on the

exemption<sup>18</sup> Accordingly, the total recordkeeping burden hours for all rule 203A-2(e) advisers has increased from 924 hours to 1,064 hours.<sup>19</sup>

The Commission estimates that the total cost to each internet investment adviser to comply with the recordkeeping provision of rule 203A-2(e) would be approximately \$1,700,<sup>20</sup> such that the total cost for the 266 advisers relying on this exemption at this time would be \$452,200<sup>21</sup> Information related to the estimated total burden is also summarized in the table 2 below.

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<sup>18</sup> This estimate is based on information reported by advisers through the Investment Adviser Registration Depository (“IARD”) through March 31, 2023.

<sup>19</sup> Four (4) hours x 266 advisers = 1,064 hours.

<sup>20</sup> Four (4) hours x \$425 = \$1,700. The Commission estimated this figure by multiplying the burden hours to comply with rule 203A-2(e)’s recordkeeping requirements (4 hours) by an average hourly compensation rate of \$425. The compensation rate used is the rate for a Sr. Operations Manager in the Securities Industry and Financial Markets Association’s Report on Management & Professional Earnings in the Securities Industry 2013 updated for 2022, and is modified to account for an 1,800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>21</sup> Four (4) hours x \$425 = \$1,700 x 266 advisers = \$452,200.



**TABLE 1: BURDEN ESTIMATES FOR PROPOSED RULE 203A-(e)**

	Burden Per Response				Annual Responses	Aggregate Burden				
	Internal Burden	Wage Rate	Cost of Internal Burden	Annual Cost Burden		Internal Burden	Cost of Internal Burden	Annual Cost Burden		
<b>REVISED ESTIMATES</b>										
General burden of proposed rule 203A-(e)	4 hours	×	\$425 <sup>22</sup>	\$1,700 <sup>23</sup>	\$1,700	×	266 <sup>24</sup>	4 hours	\$452,200 <sup>25</sup>	\$452,200
<b>Total annual burden</b>	<b>4 hours</b>							<b>4 hours</b>	<b>\$452,200</b>	<b>\$452,200</b>

**TABLE 2: BURDEN ESTIMATE CHANGE FOR PROPOSED RULE 203A-(e)**

IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			External Cost to Respondents (\$)		
	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
Rule 203A-2(e)	231	266	+35	924	1,064 <sup>26</sup>	+140	0	0	0

<sup>22</sup> The compensation rate used is the rate for a Sr. Operations Manager in the Securities Industry and Financial Markets Association’s Report on Management & Professional Earnings in the Securities Industry 2013 updated for 2022, and is modified to account for an 1,800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>23</sup> Four (4) hours x \$425 = \$1,700. The Commission estimated this figure by multiplying the burden hours to comply with proposed rule 203A-2(e)’s recordkeeping requirements (4 hours) by an average hourly compensation rate of \$425.

<sup>24</sup> This estimate is based on information reported by advisers through the Investment Adviser Registration Depository (“IARD”) as of March 31, 2023.

<sup>25</sup> \$1,700 x 266 advisers = \$452,200.

<sup>26</sup> Four (4) hours x 266 advisers = 1,064 hours.

**13. Cost to Respondents**

Excluding the burden hours identified in item 12, the collection of information requirement for rule 203A-2(e) is not expected to impose additional non-labor or capital costs. The Commission anticipates that most advisers registering under the rule would 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(e).

**15. Change in Burden**

The revised burden for rule 203A-2(e) results from an increase in the number of advisers relying on the rule for Commission registration eligibility. The annual recordkeeping burden under the rule previously was 924 hours, or four hours per adviser for 231 advisers in total. Adjusting this number for the 35 additional advisers relying on the rule, the annual recordkeeping burden is revised from 924 hours to 1,064 hours.<sup>27</sup>

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to Omit OMB Expiration Date**

Not applicable.

**18. Exceptions to Certification Statement for Paperwork Reduction Act**

**Submission**

Not applicable.

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<sup>27</sup> Four (4) hours x 266 advisers = 1,064 hours.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.