SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

Release No. IA-4091; File No. S7-09-15

RIN 3235-AL75

AMENDMENTS TO FORM ADV AND INVESTMENT ADVISERS ACT RULES

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form ADV that are designed to provide additional information regarding advisers, including information about their separately managed account business; incorporate a method for private fund adviser entities operating a single advisory business to register using a single Form ADV; and make clarifying, technical and other amendments to certain Form ADV items and instructions. The Commission also is proposing amendments to the Advisers Act books and records rule and technical amendments to several Advisers Act rules to remove transition provisions that are no longer necessary.

DATES: Comments should be received on or before August 11, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or

- Send an e-mail to rule-comments@sec.gov. Please include File No. S7-09-15 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-09-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (http://www.sec.gov/rules/proposed.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by e-mail.

FOR FURTHER INFORMATION CONTACT: Bridget D. Farrell, Senior Counsel, Sarah A. Buescher, Branch Chief, or Daniel S. Kahl, Assistant Director, at (202) 551-6787 or IArules@sec.gov, Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to rules 204-2 [17 CFR 275.204-2], 202(a)(11)(G)-1 [17 CFR 275.202(a)(11)(G)-1], 203-1 [17 CFR 275.203-1], and 204-1 [17 CFR 275.204-1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act" or "Act"),[1] and amendments to Form ADV [17 CFR 279.1] under the Advisers Act. The Commission is also proposing to rescind rule 203A-5 [17 CFR 275.203A-5] under the Advisers Act.

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[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and when we refer to rules under the Advisers Act, or any paragraph of these rules, we are referring to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275], in which these rules are published.

I. BACKGROUND

Form ADV is used by investment advisers to register with the Commission and with the states. The information collected on Form ADV serves a vital role in our regulatory program and our ability to protect investors. Our staff uses Form ADV data to prepare for, conduct, and implement our risk-based examination program of investment advisers, and that data also assists our staff in conducting investigations and bringing enforcement actions. In addition to providing information about each investment adviser, Form ADV data is also aggregated by our staff

across investment advisers to obtain census data and to monitor industry trends. Census data and industry trend information inform our regulatory program and the assessment of emerging risks. Importantly, Form ADV also benefits clients and prospective clients because the information filed by advisers is available to the public on our website.[2]

We have amended Form ADV several times to improve our ability to oversee investment advisers. Most recently we significantly enhanced reporting requirements for advisers to private funds in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act's ("Dodd-Frank Act's")[3] private fund adviser registration requirements.[4] Today, we are proposing a more limited set of amendments to Part 1A of Form ADV in three areas: revisions to fill certain data gaps and to enhance current reporting requirements; amendments to incorporate "umbrella registration" for private fund advisers; and clarifying, technical and other amendments to existing items and instructions.[5]

Several of the proposed amendments to Form ADV relate to separately managed accounts. Investment advisers manage assets of pooled investment vehicles, including registered and unregistered funds. Advisers also manage assets of other clients, such as pension plans,

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2 Information on Form ADV is available to the public through the Investment Adviser Public Disclosure System ("IAPD"), which allows the public to access the most recent Form ADV filing made by an investment adviser and is available at http://www.adviserinfo.sec.gov.

3 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

4 *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)] ("*Implementing Release*").

5 In general, this release discusses the Commission's proposed rule and form amendments that would affect advisers registered with the Commission. We understand that the state securities authorities intend to consider similar changes that affect advisers registered with the states, who are also required to complete Form ADV Part 1B as part of their state registrations. We will accept any comments and forward them to the North American Securities Administrators Association ("NASAA") for consideration by the state securities authorities. We request that you clearly indicate in your comment letter which of your comments relate to these items. Commenters alternatively may send comments relating to these items directly to NASAA at the following e-mail address: NASAAcomments@nasaa.org.

endowments, foundations, other institutional clients and retail clients, through separately managed accounts. We currently collect detailed information about pooled investment vehicles,[6] but little specific information regarding separately managed accounts. The proposed amendments to Form ADV would require an adviser to provide certain aggregate information on separately managed accounts it advises, including information on regulatory assets under management, investments and use of derivatives and borrowings.[7] Other examples of information we propose to collect from advisers include information on the use of social media and information on an adviser's other offices.[8] These items, and others discussed below, are designed to improve the depth and quality of the information we collect on investment advisers and to facilitate our risk monitoring initiatives.

We also are proposing amendments to Part 1A that would establish a more efficient method for the registration of multiple private fund adviser entities operating a single advisory business on one Form ADV ("umbrella registration"). Form ADV was designed to accommodate the typical registration of an investment adviser that is a single legal entity. Advisers of private funds frequently are organized using multiple legal entities, and the staff has provided guidance to private fund advisers regarding umbrella registration within the confines of the current form.[9] The proposed amendments to incorporate umbrella registration into Form ADV would make the availability of umbrella registration more widely known to advisers. Uniform filing requirements for umbrella registration in Form ADV also would provide more

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6 *See, e.g.,* Form ADV, Part 1A, Section 7.B.(1) of Schedule D; and Form PF [17 CFR 279.9].

7 Proposed Form ADV, Part 1A, Item 5.K.(1)-(4) and Section 5.K.(1)-(3) of Schedule D.

8 Proposed Form ADV, Part 1A, Items 1.I. and 1.F and Sections 1.I. and 1.F .of Schedule D.

9 *See* American Bar Association, Business Law Section, SEC Staff Letter (Jan. 18, 2012), *available at* http://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm (the "2012 ABA Letter").

consistent data about, and create a clearer picture of, groups of advisers that operate as a single business by grouping Form ADV data for each legal entity registered under the umbrella. Uniform filing requirements also would allow for greater comparability across private fund advisers.

The last group of amendments we are proposing to Part 1A are clarifying, technical, and other amendments that are informed by our staff's experience with the form and responding to inquiries by advisers and their service providers. Among other things, these amendments should assist filers and their service providers by making the form easier to understand and complete.

We also are proposing several amendments to Advisers Act rules unrelated to the revisions to Form ADV described above. First, we are proposing amendments to the books and records rule, rule 204-2, that would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly or indirectly, to any person. The proposed amendments also would require advisers to maintain originals of all written communications received and copies of written communications sent by an investment adviser related to the performance or rate of return of any or all managed accounts or securities recommendations.[10] As discussed more fully below, we believe that these proposed amendments would better protect investors from fraudulent performance claims. Finally, we are proposing several technical amendments to rules under the Advisers Act to remove transition provisions that were adopted in conjunction with previous rulemaking initiatives, but that are no longer necessary.

[10] Rule 204-2 under the Advisers Act.

We note that in December 2014, the Financial Stability Oversight Council ("FSOC") issued a notice requesting comment on aspects of the asset management industry, which includes, among other entities, registered investment advisers. Although this rulemaking proposal is independent of FSOC, the notice included requests for comment on additional data or information that would be helpful to regulators and market participants. In response to the notice, several commenters discussed issues concerning data that are relevant to this proposal, including data regarding separately managed accounts and are cited in the discussion below.[11]

II. DISCUSSION

A. Proposed Amendments to Form ADV

1. Information Regarding Separately Managed Accounts

Several of the amendments to Form ADV that we are proposing today are designed to collect more specific information about advisers' separately managed accounts.[12] For purposes of reporting on Form ADV, we consider advisory accounts other than those that are pooled investment vehicles (*i.e.*, registered investment companies, business development companies, and pooled investment vehicles that are not investment companies (*i.e.*, private funds)) to be separately managed accounts. We currently collect detailed information about pooled investment vehicles that advisers manage, but little specific information regarding separately

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11 *See* Notice Seeking Comment on Asset Management Products and Activities, 79 FR 77488 (Dec. 24, 2014) ("FSOC Request for Comment").

12 In response to the FSOC Request for Comment, *supra* note 11, some commenters expressed support for collecting additional information regarding separately managed accounts. *See, e.g.*, Comment Letter of Americans for Financial Reform (March 27, 2015); Comment Letter of State Street Corporation (March 25, 2015); and Comment Letter of The Systemic Risk Council (March 25, 2015). Other commenters did not support additional reporting regarding separately managed accounts. *See, e.g.*, Comment Letter of Money Management Institute (March 25, 2015) and Comment Letter of Wellington Management Group LLP (March 25, 2015).

managed accounts.[13] The proposed amendments are designed to enhance our staff's ability to effectively carry out our risk-based examination program and other risk assessment and monitoring activities with respect to these separately managed accounts and their investment advisers.

The proposed amendments regarding separately managed accounts would require more detailed information than we currently receive in response to Item 5 of Part 1A and Section 5 of Schedule D.[14] Item 5 and Section 5 currently require advisers to provide information about their advisory business including percentages of types of clients and assets managed for those clients. We propose to collect information specifically about separately managed accounts, including types of assets held, and the use of derivatives and borrowings in the accounts. Advisers that report that they have regulatory assets under management attributable to separately managed accounts in response to Item 5.K.(1) would be required to complete several questions in Sections 5.K.(1), 5.K.(2) and 5.K.(3) of Schedule D regarding those accounts.

First, we propose to require advisers to report the approximate percentage of separately managed account regulatory assets under management invested in ten broad asset categories, such as exchange-traded equity securities and U.S. government/agency bonds.[15] These

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13 Registered investment companies and business development companies report information about their portfolio holdings and investment strategies on reports filed with the Commission, including in their registration statements and shareholder reports. Today, in a contemporaneous release, we are proposing rule and form amendments for registered investment companies that are designed to modernize the reporting of information to the Commission. *See Investment Company Reporting Modernization*, Investment Company Act Release No. 31610, May 20, 2015. Investment advisers to private funds file reports with the Commission on Form PF. Form PF also collects information about private fund parallel managed accounts.

14 *See* section II.A.2. for a discussion of other proposed amendments to Item 5 of Part 1A.

15 Proposed Form ADV, Part 1A, Schedule D, Section 5.K.(1)(a)-(b). The Glossary to Proposed Form ADV includes "Sovereign Bonds," "Investment Grade" and "Non-Investment Grade," which are terms used in the list of asset categories. The definitions are consistent with those in Form PF.

categories are designed to collect general information about the broad categories of assets held in separately managed accounts. We believe that collecting information about the types of assets held in these accounts would allow us to better monitor this segment of the investment advisory industry by, for instance, allowing us to identify advisers that specialize in certain asset classes. Advisers would report this information annually. For advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts, we propose to collect both mid-year and year-end data on an annual basis.

Second, we propose to require advisers with at least $150 million in regulatory assets under management attributable to separately managed accounts to report information on the use of borrowings and derivatives in those accounts.[16] For advisers with at least $150 million but less than $10 billion in regulatory assets under management attributable to separately managed accounts, we propose reporting of the number of accounts that correspond to certain categories of gross notional exposure, and the weighted average amount of borrowings (as a percentage of net asset value) in those accounts.[17] For purposes of this proposed item, gross notional exposure

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[16] The $150 million threshold is consistent with Form PF, which requires investment advisers registered with the Commission that advise one or more private funds and have at least $150 million in private fund assets under management to file Form PF.

[17] The Glossary to Proposed Form ADV includes "gross notional value", "borrowings" and "net asset value." The Glossary to Proposed Form ADV defines "borrowings" as "[S]ecured borrowings and unsecured borrowings, collectively. Secured borrowings are obligations for borrowed money in respect of which the borrower has posted collateral or other credit support and should include any reverse repos (*i.e.*, any sale of securities coupled with an agreement to repurchase the same (or similar) securities at a later date at an agreed price). Unsecured borrowings are obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support." The Glossary to Proposed Form ADV defines "gross notional value" as "The gross nominal or notional value of all transactions that have been entered into but not yet settled as of the reporting date. For contracts with variable nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts as of the reporting date. For options, use delta adjusted notional value." The Glossary to Proposed Form ADV defines "net asset value" as "With respect to any client, the gross assets of the client's accounts minus any outstanding indebtedness or other accrued but unpaid liabilities." These definitions are consistent with those in Form PF.

is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any borrowings and (b) the gross notional value of all derivatives, by (ii) the net asset value of the account. Reporting on the use of borrowings and derivatives would only be required with respect to separately managed accounts with a net asset value of at least $10 million. Advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts would have to report the gross notional exposure and borrowing information described above, as well as the weighted average gross notional value of derivatives (as a percentage of the net asset value) in each of six different categories of derivatives.[18] We are proposing to collect information about gross notional exposure, borrowings, and gross notional value of derivatives because we believe it is important for us to better understand the use of derivatives and borrowings by advisers in separately managed accounts.[19] We are proposing to use these measures because they are commonly used metrics in assessing the use of derivatives and are comparable to information collected on Form PF regarding private funds. This reporting would be required for advisers managing at least $150 million in regulatory assets under management attributable to separately managed accounts, but all advisers to separately managed accounts would be required to report in Section 5.K.(1) the percentage of separately managed account assets held in derivatives.

Advisers would be required to update the derivatives and borrowings information annually when filing their annual updating amendment to Form ADV, which is consistent with

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[18] Proposed Form ADV, Part 1A, Schedule D, Section 5.K.(2)(a).

[19] In response to the FSOC Request for Comment, *supra* note 11, several commenters discussed a variety of measures for reporting leverage (which includes derivatives and borrowings). *See, e.g.*, Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association and the Investment Adviser Association (March 25, 2015); Comment Letter of BlackRock, Inc. (March 25, 2015); Comment Letter of Fidelity Investments (March 25, 2015); and Comment Letter of Managed Funds Association (March 25, 2015).

the requirement for updating other information in Item 5 of Form ADV. In addition, advisers with at least $10 billion in separately managed account regulatory assets under management would be required to report both mid-year and year-end information as part of their annual filing.[20] Note that we are not proposing that advisers file information semi-annually. Rather, when filing an annual amendment, the adviser would be required to provide information as of each semi-annual period. Requiring less detailed reporting for advisers that manage less than $10 billion in separately managed account assets, and requiring reporting on borrowings and derivatives only with respect to separately managed accounts with a net asset value of at least $10 million, are designed to balance our regulatory need for this information while seeking to minimize the reporting burden on smaller advisers where appropriate. Our staff estimates that approximately six percent of advisers that manage separately managed accounts would be required to provide the more detailed semi-annual information.[21] The proposed amendments are designed to provide mid-year and end of year data points to assist our staff in identifying the use of borrowings and derivative exposures in large separately managed accounts as part of the staff's risk assessment and monitoring programs, and to allow Commission staff to identify and monitor trends in borrowings and derivatives transactions in separately managed accounts.

Finally, we propose to require advisers to identify any custodians that account for at least ten percent of separately managed account regulatory assets under management, and the amount

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[20] Proposed Form ADV, Part 1A, Schedule D, Section 5.K.(2)(a).

[21] We propose to focus the proposed semi-annual reporting requirements on the top five to ten percent of registered investment advisers to separately managed accounts. Based on IARD data as of April 1, 2015, of the 8,500 registered investment advisers that reported regulatory assets under management from clients other than registered investment companies, business development companies and pooled investment vehicles (indicating that they have assets under management attributable to separately managed accounts) approximately 535 (approximately 6.3%) reported at least $10 billion in regulatory assets under management attributable to separately managed account clients. Having additional information about these larger advisers assists the staff in risk assessment.

of the adviser's regulatory assets under management attributable to separately managed accounts held at the custodian.[22] Information about assets held, custodians and the use of borrowings and derivatives in separately managed accounts is similar to information collected about pooled investment vehicles, and it would significantly improve our understanding of this segment of advisers' accounts. This information would allow examination staff to identify advisers whose clients use the same custodian in the event, for example, a concern is raised about a particular custodian.[23] Advisers frequently have client accounts at many custodians as a result of client requirements. Accordingly, we are proposing a ten percent threshold in order to focus the proposed reporting requirements on the identification of custodians that serve a significant number of advisers' separately managed account clients.

We request comment on the changes we propose to make to Form ADV regarding separately managed accounts.

- Advisers would be required to update separately managed account information annually. Should we require more frequent reporting, such as quarterly reporting? Should an adviser be required to update information on separately managed accounts any time the adviser files an other-than-annual amendment to Form ADV? Is it appropriate to require

[22] Proposed Form ADV, Part 1A, Item 5.K.(4) and Schedule D, Section 5.K.(3). We acknowledge that advisers that have custody (or whose related persons have custody) of client assets also currently report the number of persons who act as qualified custodians for their clients in connection with advisory services provided to clients in response to Part 1A, Item 9.F. The proposed item would provide the Commission with more detailed information about custodians by requiring advisers to separately managed accounts to identify all custodians, not just qualified custodians, that service ten percent or greater of separately managed account client assets, and would require a response whether or not the adviser or the adviser's related person has custody of assets in separately managed accounts.

[23] Information about custodians of separately managed accounts also would complement similar information that we obtain for pooled investment vehicles. *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1), Question 25. Registered investment companies are required to identify their custodians, *see*, *e.g.*, Form N-1A, Item 19(h)(3) [17 CFR 274.11A].

semi-annual data in annual reporting instead of semi-annual reporting for advisers that manage at least $10 billion in separately managed accounts? Why or why not?

- In order to better understand the use of derivatives in separately managed accounts, would we need more data points from each adviser than the annual and semi-annual proposed data points? Why or why not?
- Are the $10 million, $150 million and $10 billion thresholds appropriate? Why or why not? Should we require advisers that manage less than $150 million in assets under management attributable to separately managed accounts to report additional information about those accounts or report semi-annual information?
- Should we ask about the investment strategies used in separately managed accounts as opposed or in addition to asset types? If so, how should we define the investment strategies so that information reported to us is meaningful? Should we use some or all of the investment strategies listed in Form PF for private funds?[24] Is there other information about separately managed accounts that we should consider instead?
- Is there any overlap among the proposed asset types? If so, which particular types? Are there any additional asset types that should be included?
- Would disclosure of aggregate holdings, derivatives and borrowings in separately managed accounts raise concerns, in light of Section 210(c) of the Advisers Act, regarding the identity, investments, or affairs of any clients owning those accounts when clients are not identified? If so, please explain, and address whether there are ways in which the Commission could address these concerns and still request comparable information.

[24] *See, e.g.*, Form PF, Section 1c, Item B., Question 20.

- Would the disclosure of information about separately managed accounts in the aggregate be useful for risk monitoring and data analysis purposes? Why or why not?
- Are the proposed definitions related to Schedule D, Section 5.K.(1) and (2) sufficiently clear to allow advisers to provide the requested information? If not, please explain why and provide alternative definitions or suggestions. Would a definition of "derivatives" improve the reporting requirements? If so, how should that term be defined? For instance, should it be defined broadly to include instruments whose price is dependent on or derives from one or more underlying assets? Alternatively, should it be defined to mean futures and forward contracts, options, swaps, security-based swaps, combinations of the foregoing, or any similar instruments, or should it be defined in some other manner? If, so, how?
- Are gross notional exposures and gross notional values appropriate measures of the use of derivatives? Are there alternative or additional measures that we should consider?
- Would the disclosure of information about separately managed accounts affect or influence business or other decisions by advisers?
- Is ten percent an appropriate threshold for information on custodians that serve a significant number of separately managed accounts? Should it be higher or lower? If so, why?
- Should we require advisers to report information about the use of securities lending and repurchase agreements in separately managed accounts? If so, is there specific information we should collect, and should we require information only from advisers that manage a large amount of separately managed account assets? Are securities lending arrangements and repurchase agreements used by separately managed accounts to such

an extent that we should require all advisers that manage separately managed accounts to report this information?

- Is there additional information we should collect that would assist us in learning more about separately managed accounts?
- Is the information required to answer these proposed questions readily available to advisers? If not, why?

2. Additional Information Regarding Investment Advisers

In addition to the proposals outlined above regarding separately managed accounts, we are proposing to add several new questions and amend existing questions on Form ADV regarding identifying information, an adviser's advisory business, and affiliations. These items, developed through our staff's experience in examining and monitoring investment advisers, are designed to enhance our understanding and oversight of investment advisers and to assist our staff in its risk-based examination program.

Additional Identifying Information:

We propose several amendments to Item 1 of Part 1A of Form ADV to improve certain identifying information that we obtain. Item 1 currently requires an adviser to provide a Central Index Key number ("CIK Number") in Item 1.N only if the adviser is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.[25] We propose to remove this question from Item 1.N. and add a question to Item 1.D. that would require an adviser to provide all of its CIK Numbers if it has one or more such numbers assigned,[26]

[25] Form ADV, Part 1A, Item 1.N.

[26] The SEC assigns CIK numbers in EDGAR not only to identify entities as public reporting companies, but also when an entity is registered with the SEC in another capacity, such as a transfer agent.

regardless of public reporting company status.[27] Requiring registrants to provide all of their assigned CIK numbers, if any, would improve our staff's ability to use and coordinate Form ADV information with information from other sources to investigate relationships relating to investment advisers.

Item 1.I of Part 1A of Form ADV currently asks whether an adviser has one or more websites, and Section 1.I. of Schedule D requests the website address. We propose to amend Item 1.I. to ask whether the adviser has one or more websites or websites for social media platforms, such as Twitter, Facebook and LinkedIn, and request the social media addresses in addition to the adviser's website address in Section 1.I. of Schedule D.[28] Along with websites, advisers increasingly utilize social media to communicate and it would be useful for this information to be available to us and the general public. Our staff could use this information to help prepare for examinations of investment advisers and compare information that advisers disseminate across different social media platforms as well as identifying and monitoring new platforms. Current and prospective clients could use this information to learn more about advisers and make more informed decisions regarding the selection of advisers.

We propose amending Item 1.F of Part 1A of Form ADV and Section 1.F. of Schedule D to expand the information provided about an adviser's offices other than its principal office and place of business. We currently require an adviser to provide contact and other information about its principal office and place of business, and, if an adviser conducts advisory activities

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[27] Proposed Form ADV, Part 1A, Item 1.D.(3).

[28] Proposed Form ADV, Part 1A, Item 1.I. and Section 1.I. of Schedule D.

from more than one location, about its largest five offices in terms of number of employees.[29] In order to assist Commission examination staff to learn more about an investment adviser's business and identify locations to conduct examinations, we are now proposing that advisers provide us with the total number of offices at which they conduct investment advisory business and provide information in Schedule D about their 25 largest offices in terms of number of employees.[30] We propose 25 offices as the number to be reported because it would provide a complete listing of offices for the vast majority of investment advisers, and provide valuable information about the main business locations for the few advisers that have a very large number of offices.[31]

In addition to providing contact information for the 25 largest offices, we propose to amend Section 1.F. of Schedule D to require advisers to report each office's CRD branch number (if applicable) and the number of employees who performed advisory functions from each office, identify from a list of securities-related activities the business activities conducted from each office, and describe any other investment-related business conducted from each office. This information would help our staff assess risk, because it provides a better understanding of an investment adviser's operations and the nature of activities conducted in its top 25 offices. In addition, if the staff wanted to focus on offices that conducted a combination of activities, such as those that engaged in municipal advisory activities as well as investment advisory activities, it would have that information readily available.

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29 Form ADV, Part 1A, Item 1.F. and Section 1.F. of Schedule D.

30 Proposed Form ADV, Part 1A, Item 1.F. and Section 1.F. of Schedule D.

31 IAPD Investment Adviser Registered Representative State Data as of April 1, 2015 shows that a majority of SEC-registered advisers (approximately 98%) have 25 or fewer offices, but that many of the remaining two percent have many multiples of 25 offices.

Item 1.J. of Form ADV currently requires each adviser to provide the name and contact information for the adviser's chief compliance officer. We propose to amend Item 1.J. to require an adviser to report whether its chief compliance officer is compensated or employed by any person other than the adviser (or a related person of the adviser) for providing chief compliance officer services, and, if so, to report the name and IRS Employer Identification Number (if any) of that other person. Our examination staff has observed a wide spectrum of both quality and effectiveness of outsourced chief compliance officers and firms. Identifying information for these third-party service providers, like others on Form ADV,[32] would allow us to identify all advisers relying on a particular service provider and could be used to improve our ability to assess potential risks.

We propose to amend Item 1.O. to require advisers to report their own assets within a range.[33] We added this item in 2011, and it currently requires an adviser to check a box to indicate if it has assets of $1 billion or more, in connection with the Dodd-Frank Act's requirements concerning certain incentive-based compensation arrangements.[34] Requiring advisers to report assets within a given range would provide more accurate data for use in Commission rulemaking arising from ongoing Dodd-Frank Act implementation.[35]

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32 For example, advisers provide the names and addresses of independent public accountants that perform audits or surprise examinations and that prepare internal control reports on Form ADV, Part 1A, Schedule D, Section 9.C.

33 Proposed Form ADV, Part 1A, Item 1.O.

34 *See Implementing Release*, *supra* note 4; Section 956 of the Dodd-Frank Act. We also propose to move the instruction for how to report "assets" for the purpose of Item 1.O. from the Instructions for Part 1A to Form ADV to Item 1.O. in order to emphasize this instruction.

35 *See, e.g.*, Section 165(i) of the Dodd-Frank Act, which requires the Commission and other financial regulators to establish methodologies for the conduct of stress tests required by section 165 of the Act.

We request comment on the proposed changes to Item 1 of Part 1A and Section 1 of Schedule D.

- Are there concerns with providing all CIK numbers assigned to an adviser? If so, please explain those concerns.
- Are there concerns with providing social media information for advisers? If so, please explain those concerns. Are there ways that we could address these concerns and still request comparable information?
- Would the proposed social media information be useful to investors? Why or why not?
- Is there additional social media information that we should collect? Should we ask advisers whether they permit employees to have social media accounts associated with the advisers' business? And, if so, should we ask advisers to identify the number or percentage of employees that have those accounts? How burdensome would it be for advisers to report that information?
- As proposed, information would be required regarding an adviser's 25 largest offices. We selected 25 in order to balance the burden to investment advisers with providing this information with our need for information about additional offices. If instead we were to require all offices to be reported, would the burden on advisers be significant? Should we decrease the number of offices or provide another standard to identify the offices that should be reported?
- Would additional information about an adviser's offices be helpful to investors? Why or why not?
- Are there concerns related to disclosure of information regarding outsourced chief compliance officers? If so, please explain those concerns.

- In addition to the identification of outsourced chief compliance officers, should we also request information about advisers' use of third-party compliance auditors? If so, what information should we request?
- Are there any concerns related to disclosing the range of an adviser's own assets? If so, please explain those concerns. Should the ranges be different than proposed? Why or why not?
- Are the proposed requirements clearly stated?
- Do advisers readily have access to the data and information requested by these proposed changes?

Additional Information About Advisory Business:

In addition to the proposed amendments to Item 5 regarding separately managed accounts discussed above, we are proposing a number of other amendments to Item 5. Item 5 currently requires an adviser to provide approximate ranges for three important data points concerning the adviser's business – the number of advisory clients, the types of advisory clients, and regulatory assets under management attributable to client types.[36] We propose to amend these items to require an adviser to report the number of clients and amount of regulatory assets under management attributable to each category of clients as of the date the adviser determines its regulatory assets under management.[37] Replacing ranges with more precise information would provide more accurate information about investment advisers and would significantly enhance

[36] Form ADV, Part 1A, Item 5.C.(1), Item 5.D.(1)-(2).

[37] Proposed Form ADV, Part 1A, Item 5.D.(1)-(2). The categories of clients are the same as those in Item 5.D. of the current Form ADV, except that we propose adding "sovereign wealth funds and foreign official institutions" as a client category, and specifying that state or municipal government entities include government pension plans, and that government pension plans should not be counted as pension and profit sharing plans.

our ability to analyze data across investment advisers because providing actual numbers of clients and regulatory assets under management allows us to see the scale and concentration of assets by client type. It will also allow us to determine the regulatory assets under management attributable to separately managed accounts. We believe that the information needed for providing the number of clients and amount of regulatory assets under management should be readily available to advisers because, among other reasons, advisers are producing this data to answer the current iterations of these questions on Form ADV, and advisers typically base their advisory fees on client assets under management. We also propose to require reporting on the number of clients for whom an adviser provided advisory services but does not have regulatory assets under management in order to obtain a more complete understanding of the adviser's advisory business.[38] This information also would assist in our risk assessment process and increase the effectiveness of our examinations.

We are proposing several targeted additions to Item 5 and Section 5 of Schedule D to inform our risk-based exam program and other risk monitoring initiatives. An adviser that elects to report client assets in Part 2A of Form ADV differently from the regulatory assets under management it reported in Part 1A of Form ADV would be required to check a box noting that election.[39] This information would allow our examination staff to review across advisers the

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[38] Proposed Form ADV, Part 1A, Item 5.C.(1). An example of a situation where an adviser provides investment advice but does not have regulatory assets under management is a nondiscretionary account or a one-time financial plan, depending on the facts and circumstances.

[39] Proposed Form ADV, Part 1A, Item 5.J.(2). Form ADV, Part 2A, Item 4.E. requires an investment adviser to disclose the amount of client assets it manages on a discretionary basis and on a non-discretionary basis. The method used by an adviser to compute the amount of client assets it manages can be different from the method used to compute regulatory assets under management required for Item 5.F. in Part 1A. As discussed in the proposing release for Part 2, the regulatory assets under management calculation for Part 1A is designed for a particular purpose (*i.e.*, for making a bright line determination about whether an adviser should register with the Commission or with the states) and permitting a different calculation for Part 2 disclosure may be appropriate to enable advisers to make disclosure that is more indicative to clients

extent to which advisers report assets under management in Part 2A that differ from the regulatory assets under management reported in Part 1A of Form ADV. Having this information would allow our staff to better understand the situations in which the calculations differ, and assist us in analyzing whether those differences require a regulatory response. In addition, we propose to add a question asking the approximate amount of an adviser's regulatory assets under management that is attributable to non-U.S. clients[40] to complement the current requirement that each adviser report the percentage of its clients that are non-U.S. persons, which, based on our experience, is not always a reliable indicator of an adviser's relationships with non-U.S. clients.[41] Our examination staff could use this information to better understand the extent of investment advice provided to non-U.S. clients which would assist us in our risk assessment process.

Section 5.G.(3) of Schedule D currently requires the SEC File Number for registered investment companies and business development companies advised by the adviser. We propose adding to Section 5.G.(3) a requirement that advisers report the regulatory assets under management of all parallel managed accounts related to a registered investment company or business development company that is advised by the adviser.[42] This information would be helpful because it would permit our staff to assess the accounts and consider how an adviser

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about the nature of their business. *See Amendments to Form ADV*, Investment Advisers Act Release No. 2711 (March 3, 2008) [73 FR 13958 (March. 14, 2008)].

40 Proposed Form ADV, Part 1A, Item 5.F.(3).

41 Form ADV, Part 1A, Item 5.C.(2). For example, an adviser may report a significant percentage of clients that are non-U.S. persons, but the regulatory assets under management attributable to those clients is a small percentage of the adviser's regulatory assets under management.

42 Proposed Form ADV, Part 1A, Section 5.G.(3) of Schedule D. The Glossary to Proposed Form ADV includes "parallel managed account," which would be defined as: "With respect to any registered investment company or business development company, a parallel managed account is any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified investment company or business development company that you advise."

manages conflicts of interest between parallel managed accounts and registered investment companies or business development companies advised by the adviser. This information also would show the extent of any shift in assets between parallel managed accounts and registered investment companies or business development companies.

Finally, we propose to amend Item 5 to obtain additional information concerning wrap fee programs.[43] Item 5.I. of Part 1A currently requires an adviser to indicate whether it serves as a sponsor of or portfolio manager for a wrap fee program. We propose to amend Item 5.I. to require an adviser to report the total amount of regulatory assets under management attributable to acting as a sponsor and/or portfolio manager of a wrap fee program.[44] Section 5.I.(2) of Schedule D currently requires advisers to list the name and sponsor of each wrap fee program for which the adviser serves as portfolio manager. We propose amending Section 5.I.(2) to add questions that would require an adviser to provide any SEC File Number and CRD Number for sponsors to those wrap fee programs.[45] This information would help us better understand a particular adviser's business and assist in our risk assessment and examination process by making it easier for our staff to identify the extent to which the firm acts as sponsor or portfolio manager of wrap fee programs and collect information across investment advisers involved in a particular wrap fee program. Wrap fee accounts are held by a large number of retail clients, and we believe additional information about the capacity in which advisers serve these accounts would help us better protect investors.

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43 Form ADV, Glossary defines a wrap fee program as "[a]ny advisory program under which a specified fee or fees not based directly upon transactions in a *client's* account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of *client* transactions." We are not proposing any change to this definition.

44 Proposed Form ADV, Part 1A, Item 5.I.

45 Proposed Form ADV, Part 1A, Section 5.I.(2) of Schedule D.

We request comment on the additional changes we propose to make to Item 5 and related sections of Schedule D.

- Please describe any benefits or concerns with using more precise numbers in Item 5, rather than ranges.
- Is there any overlap among the categories of clients, and if so, among which particular categories? How could we address any overlaps?
- Please describe any concerns with providing information on: (a) the number of clients for whom investment advisers provide advisory services but do not have regulatory assets under management; (b) the regulatory assets under management attributable to non-U.S. clients; or (c) parallel managed accounts. Are there other types of information advisers could report that would meet our goals?
- Would the additional information on wrap fee programs be helpful to investors and other market participants? Should any additional information be required?
- Would advisers readily have access to the data requested?
- Are the proposed requirements clearly stated?

Additional Information about Financial Industry Affiliations and Private Fund Reporting:

Part 1A, Section 7.A. of Schedule D requires information on an adviser's financial industry affiliations and Section 7.B.(1) of Schedule D requires information on private funds managed by the adviser. We are proposing amendments to Sections 7.A. and 7.B.(1) of Schedule D that would require advisers to provide identifying numbers (*e.g.*, Public Company Accounting Oversight Board ("PCAOB") registration numbers[46] and CIK numbers[47]) in several

[46] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(e).

questions to allow us to better compare information across data sets and understand relationships of advisers to other financial service providers. We are also proposing a new question that would require advisers to report the percentage of a private fund owned by qualified clients, as defined in rule 205-3 under the Advisers Act.[48] This information would help us better understand the nature of investors in private funds.

We request comment on the proposed changes to Sections 7.A. and 7.B.(1) of Schedule D.

- Would advisers readily have access to the data requested?
- Please describe any concerns with providing: (a) identifying numbers; or (b) the percentage of a private fund owned by qualified clients.
- Are the requirements clearly stated?

3. Umbrella Registration

The Dodd-Frank Act, among other things, repealed the private adviser exemption that used to be in section 203(b)(3) of the Advisers Act.[49] As a result, many previously unregistered advisers to private funds,[50] including hedge funds and private equity funds, were required to

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47 Proposed Form ADV, Part 1A, Section 7.A of Schedule D, Question 4(b).

48 Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 15(b).

49 Section 403 of the Dodd-Frank Act. Section 203(b)(3) of the Advisers Act (the "private adviser exemption") previously exempted any investment adviser from registration if the investment adviser (i) had fewer than 15 clients in the preceding 12 months, (ii) did not hold itself out to the public as an investment adviser and (iii) did not act as an investment adviser to a registered investment company or a company that elected to be a business development company.

50 Section 202(a)(29) of the Advisers Act defines the term "private fund" as "an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act."

register under the Advisers Act. Today, about 4,364 registered investment advisers provide advice on approximately $10.1 trillion in assets to approximately 28,532 private funds clients.[51]

For a variety of tax, legal and regulatory reasons, advisers to private funds may be organized as a group of related advisers that are separate legal entities but effectively operate as - and appear to investors and regulators to be - a single advisory business. Although these separate legal entities effectively operate as a single advisory business,[52] Form ADV is designed to accommodate the registration request of an adviser structured as a single legal entity. As a result, a private fund adviser organized as a group of related advisers could have to file multiple registration forms for the same advisory business. Multiple Form ADVs for a single advisory business may distort the data we collect on Form ADV and use in our regulatory program, be less efficient and more costly for advisers, and may be confusing to the public researching an adviser on our website.

Our staff provided guidance to private fund advisers before the compliance date of the Dodd-Frank Act private fund adviser registration requirements designed to address concerns raised by advisers.[53] The guidance provided conditions under which the staff believed one

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51 Based on IARD data as of April 1, 2015.

52 We will treat as a single adviser two or more affiliated advisers that are separate legal entities but are operationally integrated, which could result in a requirement for one or both advisers to register. *See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers*, Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39646 (July 6, 2011)] ("*Exemptions Release"*); *see also In the Matter of TL Ventures Inc.*, Investment Advisers Act Release No. 3859 (June 20, 2014) (settled action).

53 *See* 2012 ABA Letter. The Division of Investment Management previously provided no-action relief to enable a special purpose vehicle ("SPV") that acts as a private fund's general partner or managing member to essentially rely upon its parent adviser's registration with the Commission rather than separately register. *See* American Bar Association Subcommittee on Private Investment Entities, SEC Staff Letter (Dec. 8, 2005), Question G1, *available at* http://www.sec.gov/divisions/investment/noaction/aba120805.htm (the "2005 ABA Letter").

adviser (the "filing adviser") may file a single Form ADV on behalf of itself and other advisers that are controlled by or under common control with the filing adviser (each, a "relying adviser"), provided that they conduct a single advisory business (collectively an "umbrella registration"). We believe that the staff's position has been successful in addressing the registration concerns that can arise from the legal structures of private fund advisers. Most advisers that can rely on umbrella registration are doing so, with approximately 750 filing advisers and approximately 2,500 relying advisers filing umbrella registrations.[54]

The method outlined in the staff guidance for filing Form ADV on behalf of multiple entities is limited, however, by the form being designed for a single legal entity, and in some cases complicates data collection and analysis on umbrella registrants and can confuse filers and the public.[55] The amendments to Part 1A that we propose would yield additional and more consistent data about, and create a clearer picture of, groups of private fund advisers that operate as a single business, while codifying the concept of umbrella registration and simplifying the process of registration for such advisers. The amendments also would allow for greater comparability across private fund advisers.

Under the amendments we are proposing, umbrella registration would be available where a filing adviser and one or more relying advisers conduct a single private fund advisory business

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54 Based on IARD data as of April 1, 2015.

55 Under the guidance provided by the staff, for example, umbrella registration is appropriate where a relying adviser is not prohibited from registering with the Commission by section 203A of the Advisers Act. *See* 2012 ABA Letter, *supra* note 9. However, a relying adviser does not currently have a way to answer Item 2 regarding the basis on which it is eligible for SEC registration. In addition, relying advisers often must list owners and executive officers in a confusing manner in Schedules A and B which were not designed to accommodate multiple advisers and do not always provide the Commission staff with useful information on the owners of each relying adviser. Also, the filing adviser currently discloses its reliance on the 2012 ABA Letter in the Miscellaneous Section of Schedule D.

and each relying adviser is controlled by or under common control with the filing adviser. As proposed, umbrella registration would only be available in the scenario of a private fund adviser operating as a single business through multiple legal entities. At this time, we do not believe umbrella registration would be appropriate for advisers that are related but that operate separate advisory businesses as it would compromise data quality and complicate analyses that rely on data from Form ADV.[56] In addition, providing for disparate businesses to register on a single Form ADV as it is designed today would limit investors' ability to assess information on investment advisers because, based on our experience, reporting information about multiple advisers' businesses together on a single form would make Part 1A difficult to understand.

Accordingly, we are proposing amendments to Form ADV's General Instructions that would establish conditions for an adviser to assess whether umbrella registration is available. The conditions, which are indicia of a single advisory business, include the following:

1. The filing adviser and each relying adviser advise only private funds and clients in separately managed accounts that are qualified clients (as defined in rule 205-3 under the Advisers Act) and are otherwise eligible to invest in the private funds advised by the filing adviser or a relying adviser and whose accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those private funds;

[56] The filing of a single Form ADV for exempt reporting advisers in a manner similar to the filing of an umbrella registration for registered advisers also would not be available as the conditions of a single advisory business are designed, in part, to reflect requirements that only apply to registered advisers, including the requirement for compliance policies and procedures pursuant to rule 206(4)-7 under the Advisers Act and for a code of ethics pursuant to rule 204A-1 under the Advisers Act. An exempt reporting adviser is an investment adviser that qualifies for the exemption from registration under section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, or under rule 203(m)-1 under the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than $150 million. *See* Form ADV Glossary.

2. The filing adviser has its principal office and place of business in the United States and, therefore, all of the substantive provisions of the Advisers Act and the rules thereunder apply to the filing adviser's and each relying adviser's dealings with each of its clients, regardless of whether any client or the filing adviser or relying adviser providing the advice is a United States person; [57]
3. Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser's supervision and control and, therefore, each relying adviser, its employees and the persons acting on its behalf are "persons associated with" the filing adviser (as defined in section 202(a)(17) of the Advisers Act);
4. The advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and each relying adviser is subject to examination by the Commission; and
5. The filing adviser and each relying adviser operate under a single code of ethics adopted in accordance with rule 204A-1 under the Advisers Act and a single set of written policies and procedures adopted and implemented in accordance with rule 206(4)-(7) under the Advisers Act and administered by a single chief compliance officer in accordance with that rule.[58]

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57 As we have previously stated, we do not apply most of the substantive provisions of the Advisers Act to the non-U.S. clients of a non-U.S. adviser registered with the Commission. *See Exemptions Release*, *supra* note 52, at section II.D. The Glossary to Form ADV provides that "United States person" has the same meaning as in rule 203(m)-1 under the Advisers Act, which includes any natural person that is resident in the United States.

58 Under this approach, the code of ethics and written policies and procedures must be administered as if the filing adviser and each relying adviser are part of a single entity, although they may take into account, for example, that a relying adviser operating in a different jurisdiction may have obligations that differ from the filing adviser or another relying adviser.

The conditions are drawn from our experience with examining investment advisers and are designed to capture advisers to private funds that operate as a single business through commonality of the application of the Advisers Act and rules to all entities, implementation of compliance requirements, and advisory services. They are designed to include advisers to private funds (as discussed in condition 1) that operate as a single business. Conditions 2 and 4 provide assurance that our staff has access to and can readily examine the filing and relying advisers and that the Advisers Act and the rules thereunder fully apply to all advisers under the umbrella registration and clients of those advisers. Conditions 3 and 5 are designed to address the requirement that the filing and relying advisers operate as a single business. Advisers that operate under common supervision and control and have a single set of compliance policies and procedures and code of ethics are likely to operate as a single business. Finally, the conditions are the same as those in the staff's guidance that many investment advisers have relied on since 2012 (except that the staff's guidance also included disclosure conditions for Form ADV, the substance of which is covered elsewhere in this proposal).[59]

In addition, we propose to amend the General Instructions to provide advisers using umbrella registration directions on completing Form ADV for the filing adviser and each relying adviser, including details for filing umbrella registration requests and the timing of filings and amendments in connection with an umbrella registration.[60] To satisfy the requirements of Form ADV while using umbrella registration, the filing adviser would be required to file, and update as required, a single Form ADV (Parts 1 and 2) that relates to, and includes all information concerning, the filing adviser and each relying adviser, and must include this same information

[59] *See* 2012 ABA Letter, *supra* note 9, Question 4.

[60] *See* Proposed Form ADV General Instruction 5.

in any other reports or filings it must make under the Advisers Act or the rules thereunder (*e.g.*, Form PF). The proposed revisions to the form's Instructions and Form ADV would further specify those questions that should be answered solely with respect to the filing adviser and those that require the filing adviser to answer on behalf of itself and its relying adviser(s).[61] Additionally, we propose amending the Glossary to add the following three terms: (i) "filing adviser;"[62] (ii) "relying adviser;"[63] and (iii) "umbrella registration."[64]

We also are proposing a new schedule to Part 1A – Schedule R – that would have to be filed for each relying adviser.[65] Schedule R would require identifying information, basis for SEC registration, and ownership information about each relying adviser, some of which is already filed by an adviser relying on the staff guidance.[66] This new schedule would consolidate in one location important information for each relying adviser and address the problem the staff faced in its guidance that resulted in information regarding relying advisers being submitted in response to a number of different items on the Form, in ways not consistent across advisers, due to the fact

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61 *See, e.g.*, statements added to Proposed Form ADV, Instructions and Part 1A, Items 1, 2, 3, 7, 10 and 11.

62 "Filing Adviser" would mean: "An investment adviser eligible to register with the SEC that files (and amends) a single *umbrella registration* on behalf of itself and each of its *relying advisers." See* Proposed Form ADV Glossary.

63 "Relying Adviser" would mean: "An investment adviser eligible to register with the SEC that relies on a *filing adviser* to file (and amend) a single *umbrella registration* on its behalf." *See* Proposed Form ADV Glossary.

64 "Umbrella Registration" would mean: "A single registration by a *filing adviser* and one or more *relying advisers* who collectively conduct a single advisory business and that meet the conditions set forth in General Instruction 5." *See* Proposed Form ADV Glossary.

65 Advisers that choose to file an umbrella registration would be directed by Item 1.B. to complete a new Schedule R for each relying adviser. Proposed Form ADV, Part 1A, Item 1.B.(2).

66 Schedule R would require the following information for each relying adviser: identifying information (Section 1); basis for SEC registration (Section 2); form of organization (Section 3) and control persons (Section 4). For basis for SEC registration (Section 2), we do not include categories that would make the relying adviser ineligible for umbrella registration, such as serving as an adviser to a registered investment company.

that Form ADV was not designed to accommodate umbrella registration.[67] Finally, we propose to add a new question to Schedule D that would require advisers to identify the filing advisers and relying advisers that manage or sponsor private funds reported on Form ADV. This information would allow us to identify the specific adviser managing the private fund reported on Form ADV if it is part of an umbrella registration.[68]

Advisers registering in reliance on the staff's umbrella registration approach outlined in the 2012 ABA Letter do not provide information about each relying adviser's address, CRD, unique identifier numbers, basis for registration or form of organization. Our proposal would require this information to be reported. We believe that certain information that we propose requiring as part of umbrella registration (such as mailing address and basis for registration) would be the same for nearly all relying advisers, and the filing adviser could check a box indicating that the mailing address of the relying advisers is the same as that of the filing adviser. Advisers relying on the 2012 ABA Letter do not currently identify the filing adviser or relying adviser that advises private funds reported on Section 7.B.(1) of Schedule D, and our proposal would require this information to be reported. We believe that this information would help us better understand the management of private funds, would provide information to contact relying advisers, and would help us better understand the relationship between relying advisers and filing advisers.

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67 Under the staff's guidance in the 2012 ABA Letter, an adviser reports in its Form ADV (Miscellaneous Section of Schedule D) that it and its relying advisers are together filing a single Form ADV in reliance on the position expressed in the letter and identifies each relying adviser by completing a separate Section 1.B., Schedule D, of Form ADV for each relying adviser and identifying it as such by including the notation "(relying adviser)." *See* 2012 ABA Letter, *supra* note 9, Question 4.

68 Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 3(b).

We request comment on the changes we propose to make to Form ADV regarding umbrella registration.

- Should we amend Form ADV to accommodate umbrella registration? Why or why not?
- Would these amendments be helpful for private fund advisers and investors?
- Is umbrella registration appropriate or should we require separate registration by each adviser?
- Would umbrella registration provide more consistent and clear information about groups of private fund advisers that operate as a single business? Why or why not?
- Are there additional or different conditions we should consider for umbrella registration?
- Should we require that the availability of umbrella registration be expanded to include advisers with clients that are not primarily private funds, and if so, what are the legal structures that it should accommodate and are the proposed conditions sufficient to capture only single advisory businesses?
- We are not proposing to make filing an umbrella registration mandatory, because we believe it is appropriate to permit advisers to file a separate Form ADV for each relying adviser if they choose to do so.[69] Should umbrella registration be required? Should firms indicate if they could, but chose not to, rely on umbrella registration?
- Are the proposed amendments to the instructions and Form ADV sufficient to implement umbrella registration? If not, what amendments are necessary?
- Should we require more, less or different information on proposed Schedule R? What information should be added or deleted?

[69] Under the proposed amendments, multiple private advisers operating a single advisory business may elect to apply separately for registration.

4. Proposed Clarifying, Technical and Other Amendments to Form ADV

We are proposing several amendments to Form ADV that are designed to clarify the form and its instructions. We believe these proposed amendments to Form ADV would make the filing process clearer and therefore more efficient for advisers, and increase the reliability and the consistency of information provided by investment advisers. More reliable and consistent information would improve our staff's ability to interpret, understand, and place in context the information provided by advisers, and also would allow our staff to make comparisons across investment advisers, and improve the risk assessment and examination program. Many of these proposed amendments are derived from questions frequently received by our staff.

Proposed Amendments to Item 2:

Item 2.A. of Part 1A of Form ADV requires an adviser to select the basis upon which it is eligible to register with the Commission, and Item 2.A.(9) includes as a basis that the adviser is eligible for registration because it is a "newly formed adviser" relying on rule 203A-2(c) because it expects to be eligible for SEC registration within 120 days.[70] Section 2.A.(9) of Schedule D. is entitled "Newly Formed Adviser" and requests the adviser to make certain representations. Our staff has received questions about whether the exemption from the prohibition on Commission registration contained in rule 203A-2(c) under the Advisers Act applies *only* to entities that have been "newly formed," *i.e.*, newly created as corporate or other legal entities. It does not only apply to newly created entities and therefore we propose to delete the phrase "newly formed adviser" from Item 2.A.(9) and Section 2.A.(9) of Schedule D. Section 2.A.(9) would be

[70] Form ADV, Part 1A, Item 2.A.(9) and Section 2.A.(9) of Schedule D.

renamed "Investment Advisers Expecting to be Eligible for Commission Registration within 120 Days."[71]

Proposed Amendments to Item 4:

Item 4 of Part 1A of Form ADV addresses successions of investment advisers, and the Instructions to Item 4 provide that a new organization has been created under certain circumstances, including if the adviser has changed its structure or legal status (*e.g.*, form of organization or state of incorporation). Our staff frequently receives questions from investment advisers regarding this item and we propose adding to Item 4 and Section 4 of Schedule D text that is currently contained in the Instructions to Item 4 that succeeding to the business of a registered investment adviser includes, for example, a change of structure or legal status (*e.g.*, form of organization or state of incorporation).[72]

Proposed Amendments to Item 7:

Item 7 of Part 1A of Form ADV and corresponding sections of Schedule D require advisers to report information about their financial industry affiliations and the private funds they advise. We propose several technical amendments to Item 7. We propose to revise Item 7.A., which requires advisers to check whether their related persons are within certain categories of the financial industry, to clarify that advisers should not disclose in response to this item that some of their employees perform investment advisory functions or are registered representatives of a broker-dealer, because this information should instead be reported on Items 5.B.(1) and 5.B.(2) of Part 1A, respectively. Items 5.B.(1) and 5.B.(2) request information about an adviser's

[71] Proposed Form ADV, Part 1A, Item 2.A.(9); *see* rule 203A-2(c) under the Advisers Act.

[72] Proposed Form ADV, Part 1A, Item 4.A.

employees. Adding this text to Form ADV should assist filers in filling out the form as well as provide more accurate data to us and the general public.[73]

Item 7.B. of Part 1A of Form ADV asks whether the adviser serves as adviser to any private fund. Section 7.B.(1) of Schedule D requires advisers to provide information about the private funds they manage. We propose adding text to Item 7.B. clarifying that Section 7.B.(1) of Schedule D should not be completed if another SEC-registered adviser or SEC exempt reporting adviser reports the information required by Section 7.B.(1) of Schedule D. Currently the instructions only refer to another adviser. We also propose several amendments to Section 7.B.(1) of Schedule D. Question 8 of Section 7.B.(1) currently asks whether the private fund is a "fund of funds," and if it is, whether the private fund invests in funds managed by the adviser or a related person of the adviser. Below those two questions there is currently a note informing advisers when they should answer yes to the first question regarding whether the private fund is a "fund of funds." We propose renaming the first question as Question 8(a), moving the note to directly after Question 8(a), and making the second question Question 8(b).[74] We believe these proposed changes would assist filers in answering Question 8.

Question 10 of Section 7.B.(1) of Schedule D asks the adviser to identify the category of the private fund. We propose to delete text in Question 10 that directs advisers to refer to the underlying funds of a fund of funds when selecting the type of fund, in order to reconcile differences with Form PF, which permits advisers to disregard any private fund's equity

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[73] Proposed Form ADV, Part 1A, Item 7. The staff has provided this clarification and it is currently available online at our staff's Frequently Asked Questions on Form ADV and IARD, *available at* http://www.sec.gov/divisions/investment/iard/iardfaq.shtml.

[74] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Questions 8(a)-(b).

investments in other private funds.[75] Question 19 of Section 7.B.(1) of Schedule D asks whether the adviser's clients are solicited to invest in the private fund. We propose to add text to Question 19 to make clear that the adviser should not consider feeder funds as clients of the adviser to a private fund when answering whether the adviser's clients are solicited to invest in the private fund.[76] This is a common question that our staff receives and the intent of Question 19 is not to capture affiliated feeder funds. Question 21 of Section 7.B.(1) of Schedule D asks whether the private fund relies on an exemption from registration of its securities under Regulation D of the Securities Act of 1933 and Question 22 asks for the private fund's Form D file number. We propose a clarifying revision to Question 21 to ask if the private fund has ever relied on an exemption from registration of its securities under Regulation D, in order to better reflect the intention of the Question.[77] The current Question 21, if answered in the negative, would not require the adviser to provide the private fund's Form D file number in Question 22, meaning we would not receive Form D file numbers in the event there was past reliance on Regulation D.[78]

We propose a revision to Question 23(a)(2). Currently, this question requires an adviser to check a box to indicate whether the private fund's financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP").[79] We propose to add text instructing advisers that they are required to answer Question 23(a)(2) only if they answer

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75 Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 10. *See* General Instruction 7 to Form PF.

76 Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 19.

77 Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 21.

78 Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 21.

79 Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(a)(2).

"yes" to Question 23(a)(1), which asks whether the private fund's financial statements are subject to an annual audit.[80] This revision will clarify when an adviser is actually required to answer Question 23(a)(2). We also propose to revise Question 23(g). The question currently asks whether the private fund's audited financial statements are distributed to private fund investors. We propose adding "for the most recent fiscal year" to clarify the question. In addition, we propose to revise Question 23(h). This question currently asks whether the report prepared by the auditing firm contains an unqualified opinion.[81] This question has prompted questions from advisers regarding which report and what timeframe the question refers to. We propose to clarify the question to ask whether all of the reports prepared by the auditing firm since the date the adviser last filed its annual updating amendment contain unqualified opinions.[82] Finally, we propose adding Question 25(g), which would request the legal entity identifier, if any, for a private fund custodian that is not a broker-dealer, or that is a broker-dealer but does not have an SEC registration number. This information would help our examination staff more readily identify the use of particular custodians by private funds.

Proposed Amendments to Item 8:

In order to address a frequent question from filers, we propose to clarify that advisers should answer Item 8 based on the types of participation and interest the adviser expects to engage in during the next year. Item 8.B.(2) of Part 1A of Form ADV currently asks whether the adviser or any related person of the adviser recommended purchase of securities to advisory clients for which the adviser or any related person of the adviser serves as underwriter, general or

80 Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(a)(2).

81 Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(h).

82 Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(h).

managing partner, or purchaser representative.[83] The current wording has caused confusion regarding the treatment of purchaser representatives. We are proposing to reword the question to ask whether the adviser or any related person of the adviser recommends to advisory clients or acts as a purchaser representative for advisory clients with respect to the purchase of securities for which the adviser or any related person of the adviser serves as underwriter or general or managing partner. This proposed edit is designed to clarify that the question applies to any related person who recommends to advisory clients or acts as a purchaser representative for advisory clients with respect to the purchase of securities for which the adviser or any related person of the adviser serves as underwriter, general or managing partner.[84]

Item 8.H. of Part 1A of Form ADV asks whether the adviser or any related person of the adviser, directly or indirectly, compensates any person for client referrals. We are proposing revisions to Item 8.H. to break the question into two parts to increase our understanding of compensation for client referrals. Proposed Item 8.H.(1) would cover compensation to persons other than employees for client referrals.[85] Proposed Item 8.H.(2) would cover compensation to employees, in addition to employees' regular salaries, for obtaining clients for the firm.[86] Item 8.I. asks whether the adviser or any related person of the adviser directly or indirectly receives compensation from any person for client referrals. We have also proposed wording to clarify that Item 8.I. is not designed to include the regular salary that the adviser pays to an employee.[87] We

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83 Form ADV, Part 1A, Item 8.B.(2).

84 Proposed Form ADV, Part 1A, Item 8.B.(2).

85 Proposed Form ADV, Part 1A, Item 8.H.(1).

86 Proposed Form ADV, Part 1A, Item 8.H.(2).

87 Proposed Form ADV, Part 1A, Item 8.I.

have proposed these edits to better understand how advisers compensate both their staff and third parties for client referrals. The proposed revisions to this item do not change the scope of the information collected, but instead provide more precise information about compensation for client referrals.

Proposed Amendments to Section 9.C. of Schedule D:

Section 9.C. of Schedule D requests information about independent public accountants that perform surprise examinations in connection with the Advisers Act custody rule, rule 206(4)-2. We propose two changes to Section 9.C. of Schedule D. First, we propose to add text requiring an adviser to provide the PCAOB registration number of the adviser's independent public accountant to improve our staff's ability to cross-reference information submitted through other systems and monitor compliance with the custody rule.[88] Section 9.C.(6) currently requires advisers to report whether any report prepared by an independent public accountant that audited a pooled investment vehicle or examined internal controls contained an unqualified opinion. We propose to amend Section 9.C.(6) in a manner similar to Section 7.B.(1) of Schedule D, Question 23(h) as described above to provide clarity to filers. Accordingly, the question would now ask whether all of the reports prepared by the independent public accountant since the date of the last annual updating amendment have contained unqualified opinions.[89]

Proposed Amendments to Disclosure Reporting Pages:

Item 11 of Part 1A of Form ADV requires registered advisers and exempt reporting advisers to provide information about their disciplinary history and the disciplinary history of

[88] Proposed Form ADV, Part 1A, Section 9.C.(3) of Schedule D.

[89] Proposed Form ADV, Part 1A, Section 9.C.(6) of Schedule D.

their advisory affiliates. Those advisers who report an event for purposes of Item 11 are directed to complete a Disclosure Reporting Page ("DRP") to provide the details of the event. DRPs can be removed from Form ADV under certain circumstances, including when "the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or advisory affiliate's favor."[90] We propose amending this text in each DRP to add "or reporting as an exempt reporting adviser with the SEC" after "applying for registration with the SEC" to clarify that both registered and exempt reporting advisers may remove a DRP from their Form ADV record if a criminal, regulatory or civil judicial action was resolved in the adviser's (or advisory affiliate's) favor.[91] This proposal would make disciplinary reporting uniform across registered and exempt reporting advisers, consistent with requiring exempt reporting advisers to report disciplinary events on Form ADV.

Proposed Amendments to Instructions and Glossary:

Together with the proposed amendments to Part 1A, we are also proposing conforming amendments to the General Instructions and the Glossary for Form ADV. As discussed above, we propose to amend the General Instructions to include instructions regarding umbrella registration. We also propose to remove outdated references to "Special One-Time Dodd-Frank Transition Filing for SEC Registered Advisers" and "recent" amendments to Form ADV Part 2

90 Form ADV, Part 1.A., Criminal, Regulatory Action and Civil Judicial Action Disclosure Reporting Pages.

91 Proposed Form ADV, Part 1A, Criminal, Regulatory Action and Civil Judicial Action Disclosure Reporting Pages.

that are no longer needed. We propose to update the definition of "Legal Entity Identifier" to reflect recent advancements in this protocol.[92]

Where applicable, we propose to make technical revisions to specify that an adviser must "apply for registration" (rather than simply "register") to more accurately reflect the rule text. We also propose to delete text in the instructions related to Item 1.O. because this text is proposed to appear directly in the corresponding section of Part 1 of Form ADV. We propose to add text clarifying that a change in information related to Item 1.O. does not necessitate a prompt other-than-annual amendment (as changes to Item 1 otherwise do).

We request comment on our proposed clarifying, technical and other amendments.

- Are the proposed amendments necessary? Should we consider different or additional amendments? If so, please specify.
- Are there any ambiguities or concerns that we should address in the form, instructions or glossary?
- Should we ask additional questions in Section 7.B.(1) of Schedule D regarding an adviser's reliance on Regulation D? If so, what additional information should we request?
- Are the proposed amendments regarding payment for client referrals in Item 8 clear? Why or why not?

[92] The proposed definition of Legal Entity Identifier is: A "legal entity identifier" assigned or recognized by the Global LEI Regulatory Oversight Committee (ROC) or the Global LEI Foundation (GLEIF). *See* Proposed Form ADV: Glossary. In Item 1, we propose removing outdated text referring to the "legal entity identifier" as being "in development" in the first half of 2011.

B. Proposed Amendments to Investment Advisers Act Rules

1. Proposed Amendments to Books and Records Rule

We are proposing two amendments to the Advisers Act books and records rule, rule 204-2, that would require investment advisers to maintain additional materials related to the calculation and distribution of performance information.

Rule 204-2(a)(16) currently requires advisers that are registered or required to be registered with us to maintain records supporting performance claims in communications that are distributed or circulated to ten or more persons.[93] Although it has been our staff's experience that investment advisers routinely make and preserve communications containing performance information and records to support the performance claims, the books and records rule requires such records only when the communication is distributed to ten or more persons. We are proposing to amend rule 204-2(a)(16) by removing the ten or more persons condition and replacing it with "any person." Accordingly, advisers would be required to maintain the materials listed in rule 204-2(a)(16) that demonstrate the calculation of the performance or rate of return in any communication that the adviser circulates or distributes, directly or indirectly, to any person. The veracity of performance information is important regardless of whether it is a personalized client communication or in an advertisement sent to ten or more persons.

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[93] Rule 204-2(a)(16) requires advisers to make and keep "All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); provided, however, that, with respect to the performance of managed accounts, "the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph."

Rule 204-2(a)(7) currently requires advisers that are registered or required to be registered with us to maintain certain categories of written communications received and copies of written communications sent by such advisers.[94] We are proposing to amend rule 204-2(a)(7) to require advisers to also maintain originals of all written communications received and copies of written communications sent by an investment adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations. We believe these records would be useful in examining and evaluating adviser performance claims. A recent enforcement action demonstrated to us the disadvantages of not requiring investment advisers to maintain records forming the basis of performance calculations or performance communications sent to individuals.[95]

Based on our staff's experience, we believe that most advisers already maintain this information as part of their compliance with rule 206(4)-1 under the Advisers Act, which regulates advertisements by investment advisers. The proposed amendments would provide our examination staff with additional information to review an adviser's compliance with rule 206(4)-1 and would assist us in enforcing rule 206(4)-1 in cases of fraudulent advertising. Investors would benefit to the extent that the proposed amendments reduce the incidence of misleading or fraudulent advertising.

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94 Rule 204-2(a)(7) requires advisers to make and keep: "Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security."

95 *In the Matter of Michael R. Pelosi*, Investment Advisers Act Release No. 3141 (Jan. 14, 2011); Initial Decision Release No. 448 (Jan. 5, 2012); Investment Advisers Act Release No. 3805 (Mar. 27, 2014) (Commission opinion dismissing proceeding against associated person of registered investment adviser charged with providing false and misleading performance information because the record lacked an evidentiary basis from which to determine that the performance information was materially false or misleading).

We request comment on the proposed amendments to rule 204-2.

- Do investment advisers currently maintain these records? If so, are there concerns with making these required records?
- Are there alternate means that would be sufficient to collect performance information and client communications regarding performance?
- Are there exceptions that we should consider?

2. Proposed Technical Amendments to Advisers Act Rules

We are proposing technical amendments to several rules under the Advisers Act and the withdrawal of transition rule 203A-5 under the Advisers Act. The proposed amendments would remove transition provisions from rules where the transition process is complete. Three of the provisions were added as part of the implementation of the Dodd-Frank Act. Two provisions were added when we amended Form ADV and several Advisers Act rules to require advisers to electronically file their brochures with the Commission.

Rule 203A-5

The Dodd-Frank Act amended section 203A of the Advisers Act to prohibit from SEC registration "mid-sized" advisers that generally have assets under management of between $25 million and $100 million.[96] Rule 203A-5 provided a temporary exemption from the prohibition on registration for mid-sized advisers to facilitate their transition to state registration.[97] We propose withdrawing rule 203A-5 because the transition of mid-sized advisers from SEC to state registration was completed in June 2012.

96 *See* Section 410 of the Dodd-Frank Act.

97 *See Implementing Release*, *supra* note 4.

Rule 202(a)(11)(G)-1(e)

Section 409 of the Dodd-Frank Act created a new exclusion from the definition of "investment adviser" in section 202(a)(11)(G) of the Advisers Act for family offices. The Commission adopted rule 202(a)(11)(G)-1[98] defining a family office and provided two extended transition periods for family offices with certain charitable organization clients and family offices relying on the rescinded "private adviser" exemption.[99] We propose removing paragraph (e) of rule 202(a)(11)(G)-1 because subparagraph (1) of the transition provisions provided for by it expired on December 31, 2013 and subparagraph (2) expired on March 30, 2012.

Rule 203-1(e)

Rule 203-1 outlines the procedures for advisers to register with the Commission. Paragraph (e) of the rule was added as part of the implementation of the Dodd-Frank Act and allowed companies that were relying on the rescinded "private adviser" exemption[100] to remain exempt from registration until March 30, 2012 under certain conditions.[101] We propose removing paragraph (e) from Rule 203-1 because the transition for private advisers is now complete.

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98 *Family Offices*, Investment Advisers Act Release No. 3220 (June 22, 2011) [76 FR 37983 (June 29, 2011)].

99 Section 203(b)(3) of the Advisers Act as in effect before July 21, 2011, repealed by section 403 of the Dodd-Frank Act.

100 *Id.*

101 *See Implementing Release, supra* note 4. The rule 203-1(e) exemption from registration requires not only reliance on the former private adviser exemption but also that an adviser have fifteen or fewer clients in the preceding twelve months and neither hold itself out to the public as an investment adviser nor act as an investment adviser to a registered investment company or business development company.

Rule 203-1(b) and Rule 204-1(c)

Rule 203-1 and Rule 204-1 were amended in 2010 to provide transition periods for advisers to file narrative brochures required by Part 2A of Form ADV electronically with the Investment Adviser Registration Depository ("IARD").[102] Rule 203-1(b), entitled "transition to electronic filing," requires investment advisers applying for registration after January 1, 2011 to file their brochures electronically unless they receive a continuing hardship exemption.[103] Rule 204-1(c) requires investment advisers that are required to file a brochure and had a fiscal year that ended on or after December 31, 2010 to electronically file a Part 2A brochure as part of their next annual updating amendment. We propose removing paragraph (b) from rule 203-1 and paragraph (c) from rule 204-1 because the transition to electronic filing is now complete.[104]

We request comment on these proposed changes.

- Is there any benefit to keeping any of these provisions?

III. ECONOMIC ANALYSIS

A. Introduction

The Commission is sensitive to the benefits and costs of its rules. The following economic analysis identifies and considers the benefits and costs—including the effects on efficiency, competition, and capital formation—that would result from the proposed amendments to Form ADV and the proposed amendments to and rescission of certain rules under the

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102 *Amendments to Form ADV*, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49233 (Aug. 12, 2010)].

103 The continuing hardship exemption under rule 203-3 will not be withdrawn by these technical amendments.

104 We propose redesignating current paragraphs (c) and (d) of Rule 203-1 as (b) and (c) and redesignating current paragraphs (d) and (e) of Rule 204-1 as (c) and (d).

Investment Advisers Act. The economic effects of the proposed amendments are discussed below and have informed the policy choices described in this release.

We are proposing amendments to Form ADV and the Advisers Act books and records rule 204-2, and technical amendments to several other rules under the Advisers Act. In summary, and as discussed in greater detail in section II. above, we are proposing the following amendments to Form ADV and Advisers Act rules:

- Amendments to Form ADV that are designed to fill certain data gaps and enhance current reporting provided by investment advisers in order to improve the depth and quality of the information we collect on investment advisers and to facilitate our risk monitoring objectives;
- Amendments to Form ADV to incorporate "umbrella registration" for private fund advisers;
- Clarifying, technical and other amendments to Part 1A of Form ADV;
- Amendments to the Advisers Act books and records rule that would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the investment adviser circulates or distributes; and
- Technical amendments to several rules under the Advisers Act to remove transition provisions that are no longer necessary.

We rely on information reported by investment advisers to us on Form ADV to monitor trends, assess emerging risks, inform policy choices and rulemaking, and assist Commission staff in examination and enforcement efforts. We believe that the proposed amendments to Form ADV would improve the information provided by investment advisers to the Commission,

clients and prospective clients and would improve investor protection by informing policy choices and focusing examination activities. We also believe that the proposed amendments to the Advisers Act books and records rule would improve investor protections by providing useful information to evaluate advisers' performance claims.

The regulatory regime as it exists today for investment advisers serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation of the proposed amendments are discussed. The baseline includes the current requirement for investment advisers to file Form ADV, the staff guidance that permits filing advisers to file a single Form ADV on behalf of itself and each relying adviser,[105] the current requirements for investment advisers to maintain books and records, and other current rules under the Advisers Act. The parties that would be affected by the proposed amendments are investment advisers that file Form ADV, including private fund advisers that rely on, or will rely on, umbrella registration, and investment advisers that currently manage, or will manage, separately managed accounts, the Commission, current and future advisory clients and other current and future users of investment adviser information reported on Form ADV, including third-party information providers.

Based on IARD system data as of April 2015, approximately 11,600 investment advisers are registered with the Commission, and 2,914 exempt reporting advisers file reports with the Commission. Approximately 8,500 investment advisers registered with us (73%) reported assets under management attributable to separately managed account clients. Of those 8,500 advisers, approximately 5,366 advisers reported regulatory assets under management attributable to separately managed account clients of at least $150 million but less than $10 billion and

[105] *See* 2012 ABA Letter, *supra* note 9.

approximately 535 advisers reported regulatory assets under management attributable to separately managed account clients of at least $10 billion.[106] Advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts would be subject to proposed additional reporting on separately managed accounts on Form ADV. Approximately 750 registered advisers to private funds currently submit a single Form ADV on behalf of themselves and 2,500 relying advisers, relying on the 2012 ABA Letter. All investment advisers registered or required to be registered with us are subject to the Advisers Act books and records rule.

We have sought, where possible, to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments to Form ADV and Investment Advisers Act rules, and reasonable alternatives. As discussed below, in certain cases, we are unable to quantify the economic effects because we lack the information necessary to provide reasonable estimates. The economic effects of the proposal also depend upon a number of factors some of which we cannot estimate, such as the extent to which investor protection and our ability to oversee investment advisers will improve, and the extent to which investors would utilize the information in Form ADV to choose or retain an investment adviser. Therefore, some of the discussion below is qualitative in nature. We request comment on all aspects of the economic effects of the amendments that we are proposing, such as the costs and benefits, effects on efficiency, competition and capital formation, and reasonable alternatives to the proposed amendments. We request that commenters identify sources of data and information

[106] Based on IARD data as of April 1, 2015. These estimates are approximations because Form ADV currently collects information about assets under management by client type and the number of clients of each type in broad ranges. Proposed Item 5.D.(1)-(2) would require advisers to specify their assets under management and number of clients by client type, which will benefit our ability to understand and oversee the investment advisers that advise these accounts and recognize potential risks.

as well as provide data and information to assist us in analyzing the economic consequences of the proposed rulemaking.

B. Proposed Amendments to Form ADV

Some of the proposed amendments to Form ADV are designed to address certain gaps in information, such as information about advisers' separately managed accounts. We are also proposing to collect additional information on Form ADV on topics such as social media, offices, foreign clients, and wrap fee accounts. These items are designed to improve the depth and quality of information that we collect on investment advisers, which would be important for oversight activities. We are also proposing amendments to Form ADV to establish a more efficient method for advisers to private funds that are organized as multiple legal entities to register with us using a single Form ADV ("umbrella registration"). Finally, we are proposing a number of clarifying, technical and other amendments to Form ADV.

1. Economic Baseline and Affected Market Participants

As noted above, the investment adviser regulatory regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the proposed amendments to Form ADV are discussed. Form ADV is used by investment advisers to register with the SEC and with the states. Once registered, an investment adviser is required to file an annual amendment within 90 days of the end of its fiscal year end, and more frequently if required by the instructions to Form ADV.[107] Form ADV is also used by exempt reporting advisers to submit, and periodically update, reports to us by completing a limited subset of items on Form ADV. Information filed on Form ADV is

[107] *See* Rule 204-1(a) under the Advisers Act.

publicly available through the IAPD website.[108] The parties that would be directly affected by the proposed amendments to Form ADV are: investment advisers that file Form ADV with the Commission; the Commission; current and future advisory clients; and other current and future users of information filed on Form ADV, including third-party information providers.

2. Benefits

As discussed in section II. above, the proposed amendments to Form ADV would improve our ability to oversee investment advisers and identify potential risks by increasing the amount, usefulness, consistency, and reliability of the information disclosed by investment advisers, which would enhance our staff's ability to effectively carry out the risk-based examination program and other risk monitoring activities, and could improve investor protection by informing policy choices and focusing examination activities. The enhanced reporting requirements should also improve the ability of clients and potential clients of investment advisers to make more informed decisions about the selection and retention of investment advisers.

We are proposing that advisers report additional information on Form ADV regarding separately managed accounts, which are clients other than registered investment companies, business development companies and other pooled investment vehicles, such as private funds, and are designed to meet the needs of institutional and individual investors. Based on IARD data, more than 73% of investment advisers registered with us indicate that they manage assets of separately managed accounts.[109] We do not currently collect additional information specific to separately managed accounts managed by investment advisers. We currently collect detailed

[108] Certain personal identifying information is not made public.

[109] Based on IARD data as of April 1, 2015.

information about registered investment companies and private funds, but only limited information regarding the management of separately managed accounts. The absence of information about separately managed accounts, such as information about investments, compared to the information we receive describing registered investment companies and private funds, limits our ability to understand, monitor and oversee the investment advisers that advise these accounts, and recognize the potential risks relating to these accounts.[110]

The proposed amendments are intended to enhance our ability to effectively carry out our risk-based examination program and other risk-monitoring activities in relation to advisers of separately managed accounts. The additional information regarding separately managed accounts would assist us in addressing regulatory issues, anticipating the implications of various regulatory actions that we may consider, and identifying areas for additional examination and enforcement activities. The proposed amendments are also intended to improve our ability to monitor risks related to those advisers that manage greater amounts of regulatory assets under management in separately managed accounts, while reducing the potential reporting burden for those advisers that manage lesser amounts of regulatory assets under management in these accounts.

In addition to information regarding separately managed accounts, the proposed amendments to Form ADV include requests for additional information that we believe would be useful to our risk assessment, examination and oversight of investment advisers. For example, we propose requesting information regarding social media platforms used by investment advisers. This information would assist our staff with examinations and provide them with better awareness of an adviser's social media activities and how advisers use social media to

[110] *See, e.g.*, Form N-1A for investment companies and Form PF for private funds.

communicate with their clients and prospective clients. We also are proposing to request additional information about an adviser's participation in and assets under management attributable to wrap fee programs. These programs are widely used by individual retail clients, and we believe it would be useful for us and the public to learn more about an adviser's participation in these programs. For example, if our staff identifies an issue with a particular wrap fee program, then this information also would assist the staff in identifying other advisers associated with the program. Other proposed items that would assist our examination activities include replacing ranges with more precise information about the number of advisory clients and related assets under management, the total number of offices that conduct investment advisory business, and information regarding each adviser's top 25 largest offices in terms of employees.

For several items, we are proposing additional identifying information, such as the CIK numbers for all advisers that have obtained one or more of them, PCAOB registration numbers for auditing firms, and the SEC file number and the CRD number for sponsors of wrap fee programs. The identifiers will improve our ability and that of other current and future users of Form ADV information to cross-reference information from Form ADV with information from other sources to investigate and obtain a more complete understanding of the business and relationships of investment advisers.

The proposed amendments to Form ADV that would incorporate the concept of umbrella registration and establish a method on Form ADV for certain private fund advisers to use umbrella registration would clarify, simplify, and therefore make more efficient the filing procedures for these advisers and provide greater certainty about the availability of umbrella registration. The proposed amendments also would improve the consistency and quality of the information that private fund advisers disclose about their business and provide a more complete

picture of groups of private fund advisers that operate as a single business, thus allowing for greater comparability across private fund advisers. As of April 1, 2015, approximately 750 registered advisers indicated on Form ADV that they relied on the 2012 ABA Letter. Additional advisers may be eligible to use umbrella registration but do not currently do so.

The proposed clarifying, technical and other amendments to Form ADV would make the filing process clearer and therefore more efficient for advisers, and increase the reliability and the consistency of information provided by investment advisers. More reliable and consistent information would improve our staff's ability to interpret and evaluate the information provided by advisers, make comparisons across investment advisers, and better identify the investment advisers that may need additional outreach or examination. To the extent the proposed clarifying and technical amendments would make Form ADV easier to understand and complete, the proposed amendments would decrease future costs, especially for those investment advisers registering with us for the first time.

As discussed above, an improvement in our ability to oversee the business and assess the risks of investment advisers would benefit clients and prospective clients of investment advisers. To the extent that these proposed amendments would allow our staff to identify potential risks at investment advisers before any clients are disadvantaged, clients and potential clients would benefit. In addition, an increase in the amount, consistency and usefulness of information disclosed by investment advisers would allow advisory clients and potential advisory clients to make more informed decisions about the selection and retention of investment advisers. For example, these proposed amendments should allow prospective clients to review, either directly from Form ADV or through third-party information providers, additional or more precise information about the number of clients and amount of regulatory assets under management

attributable to various client types which may provide useful information about an adviser's experience and business practices. As another example, the proposed amendments should allow clients and potential clients to identify the social media platforms of an investment adviser from which additional information about the adviser may be available. An increase in the ability of clients and potential clients to differentiate investment advisers could result in a limited increase in competition among investment advisers for clients. The proposed amendments would likely not have a significant effect on capital formation or on the ability of investors to efficiently allocate capital across investments because the proposed amendments do not directly relate to the amount of capital investors allocate to investments or their ability to allocate capital across investments.

3. Costs

The proposed amendments to Form ADV would require investment advisers to provide additional information about certain aspects of their business, including separately managed accounts, social media platforms, wrap fee programs and offices. Reporting this additional information would impose additional costs on investment advisers, but we believe that much of the information we propose requesting on Form ADV would be readily available because, based on our experience, we understand that it is information used by advisers to conduct their business.

Costs would vary across advisers, depending on the nature of an adviser's business and its business model. For example, advisers that manage a limited number of separately managed accounts or that manage smaller amounts of assets under management in those accounts would have fewer reporting requirements than advisers that manage a large number of or assets in such accounts. In addition, advisers with a large number of offices would be required to report more

information on a greater number of offices than what is currently required in Form ADV. To the extent possible, we have attempted to quantify these costs. As discussed in section IV., for purposes of the increased Paperwork Reduction Act burden for Form ADV, we estimate that each adviser would incur average costs in connection with the proposed amendments to Form ADV of approximately $750,[111] for a total aggregate cost of $8,700,000.[112]

The proposed amendments regarding the reporting of information about separately managed accounts may have a limited impact on competition between advisers that manage a significant number of separately managed accounts and those that manage a small number of such accounts. If disclosure of aggregate information about separately managed accounts resulted in public disclosure of sensitive information about a small number of clients' derivative exposures because an adviser has only one or a very small number of separately managed account clients, then that adviser could be competitively disadvantaged compared with an adviser with numerous separately managed account clients because of concerns that the public disclosure of derivatives exposures would indirectly reveal sensitive information about a particular separately managed account client. We believe that this possible concern is mitigated by the fact that the proposed item does not require the disclosure or reporting of positions or specific exposures or of client identities.

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111 We estimate that each adviser will spend, on average, 2 hours to complete the proposed questions regarding separately managed accounts. We further estimate that the proposed amendments to Part 1A that request other additional information would take each adviser, on average, 1 hour to complete. As a result, we estimate a three hour increase in the total average time burden related to the proposed amendments to Form ADV. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the Securities Industry Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2013* ("SIFMA *Management and Professional Earnings Report*"), modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for a senior compliance examiner and a compliance manager are $217 and $283 per hour, respectively. [1.5 hours x $217 = $325.5] + [1.5 hours x $283 = $424.5] = $750.

112 11,600 advisers x $750 = $8,700,000.

Regarding the proposed amendments to Form ADV that would codify umbrella registration, we estimate that each adviser that files Schedule R would incur average costs of approximately $250,[113] for a total aggregate cost of $187,500.[114] We do not believe the proposed amendments to provide for umbrella registration would impose significant costs on investment advisers because advisers currently relying on the 2012 ABA Letter are already reporting much of the information that would be reported on proposed Schedule R. The additional information that would be reported for relying advisers on Schedule R, such as basis for SEC registration and form of organization, should be readily available to filing advisers.

We do not believe that the proposed clarifying, technical and other amendments to Form ADV would result in any additional costs for investment advisers and could result in some cost savings to the extent that advisers have fewer questions to research when completing the form. We have identified provisions of Form ADV that have caused confusion among filers in the past or that have resulted in inconsistent or unreliable information. Discussed above, the proposed clarifications and revisions to the questions and instructions of Form ADV would increase the efficiency of investment advisers to disclose information, and our ability to oversee investment advisers. We do not anticipate that the proposed clarifying, technical and other amendments would have a significant impact on competition or capital formation because they do not directly relate to investors' ability to differentiate among investment advisers or the amount of capital

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113 We estimate that for purposes of the PRA, the filing adviser would spend on average 1 hour completing the proposed Schedule R on behalf of its relying advisers. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA *Management and Professional Earnings Report*, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for a senior compliance examiner and a compliance manager are $217 and $283 per hour, respectively. [.5 hours x $217 = $108.5] + [.5 hours x $283 = $141.5] = $250.

114 750 advisers x $250 = $187,500.

that investors allocate to investments or their ability to efficiently allocate capital across securities.

We do not believe the proposed amendments to Form ADV would increase costs for exempt reporting advisers. Exempt reporting advisers are required to complete only a limited number of items in Part 1A of Form ADV (consisting of Items 1, 2.B., 3, 6, 7, 10, 11 and corresponding schedules) and would not be eligible to file proposed Schedule R. We are proposing limited amendments to the items that exempt reporting advisers are required to complete, including the proposed amendments to Item 1 regarding the use of social media and the reporting of information on up to 25 offices. Of the approximately 2,914 exempt reporting advisers that file information with us on Form ADV, approximately 17 reported that they had five or more other offices. Therefore, there would be a minimal increase in costs for these advisers to report this information.

4. Alternatives

Alternatives to the proposed amendments to Form ADV include the disclosure of different additional information from investment advisers. For example, with respect to separately managed accounts, we could have proposed requiring information as of each quarter, proposed other reporting thresholds to differentiate smaller and larger amounts of regulatory assets under management, or proposed narrower asset categories. Other examples include additional information describing an adviser's use of social media platforms, and additional information about the size and operations of offices.

When determining the specific proposed amendments to Form ADV for purposes of this proposal, we considered what information would be important for our oversight activities and for advisory clients and prospective clients, and the costs to investment advisers to provide this

information. Additional information could improve our ability to oversee investment advisers and protect advisory clients and potential advisory clients, and increase clients' ability to make more informed decisions about the selection and retention of investment advisers. However, we currently believe the one-time and ongoing reporting costs for investment advisers to provide this information in addition to what we have proposed could be significant when compared to its potential benefits. Another alternative to the proposed amendments to Form ADV would be for us not to require investment advisers to report additional information but instead for us to undertake targeted examinations of investment advisers. We believe it is more efficient to compile information about advisers that can then be utilized to identify specific advisers for examination. An absence of information about advisers would reduce our ability to identify industry trends and assess risks.

C. Proposed Amendments to Investment Advisers Act Rules

As discussed above, we are proposing amendments to the Advisers Act books and records rule, and technical amendments to several other rules to remove transition provisions where the transition process is complete. The discussion below focuses on the proposed amendments to the Advisers Act books and records rule, because the technical amendments are clarifying or ministerial in nature and therefore should have little, if any, economic effects.

The proposed amendments to rule 204-2 would require investment advisers to maintain records supporting performance claims in communications that are distributed or circulated to any person. Advisers also would be required to maintain originals of all written communications received and copies of all written communications sent relating to the performance or rate of return of any or all managed accounts or securities recommendations. The proposal would require investment advisers to maintain records that they have already created, rather than create

new records. We believe that most investment advisers currently maintain the information proposed to be required under the rule, as part of their compliance with the Advisers Act advertising rule (rule 206(4)-1) or as a result of their implementation of recordkeeping controls to comply with the current requirements of rule 204-2. Under the proposed amendments, each respondent would be required to retain records in the same manner and for the same period of time as currently required under rule 204-2.

1. Economic Baseline and Affected Market Participants

As noted above, the investment adviser regulatory regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the proposed amendments to the Advisers Act books and records rule (rule 204-2). The parties that would be directly affected by the proposed amendments to rules under the Advisers Act include: investment advisers registered with the Commission; the Commission; and current and future investment advisory clients. As discussed above, approximately 11,600 investment advisers are currently registered with the Commission.

2. Benefits

The proposed amendments to the Advisers Act books and records rule (rule 204-2) would benefit the clients and prospective clients of investment advisers by improving our ability to oversee investment advisers and making available to our examination staff all records necessary to evaluate performance information.

The proposed amendments to the books and records rule would provide our enforcement and examination staff with additional information to review an adviser's compliance with the Advisers Act advertising rule, rule 206(4)-1, regardless of the number of clients or prospective clients that receive performance communications. The increased efficiency in examining and

enforcing the rule may increase investor protection by increasing the disincentive for misleading or fraudulent communications, which may reduce the incidence of fraud. In addition, investors may benefit from the proposed amendments to the books and records rule as these records would assist us in enforcing rule 206(4)-1 against, for example, fraudulent performance advertising.

To the extent that the proposed amendments to the rule reduce misleading or fraudulent communications, the competitive position of investment advisers could be improved because clients and potential clients would receive more accurate information regarding an adviser's performance and thus would be better able to differentiate advisers based on skill. In addition, to the extent that the proposed amendments to the rule improve the ability of clients and potential clients to differentiate advisers based on skill, potential clients may be more likely to obtain investment advice from an investment adviser, which would increase the ability of investment advisers to compete for investor capital. The proposed amendments could improve the ability of investors to better or more efficiently allocate capital across investments to the extent that the current allocation of capital is based on misleading or fraudulent information, which in turn could promote capital formation.

3. Costs

We estimate that for purposes of the PRA, advisers would incur an aggregate cost of approximately $324,800 per year for the total hours advisory personnel would spend in complying with the proposed recordkeeping requirements.[115] A possible non-quantifiable cost as a result of the proposed recordkeeping requirements would be discouraging advisers from

[115] We estimate that for purposes of the PRA, the proposed amendments to rule 204-2 would increase the burden by 0.5 hours per adviser annually. We expect that the function of recording and maintaining records of performance information and communications would be performed by a combination of compliance clerks and general clerks at a cost of $64 per hour and $53 per hour, respectively. We anticipate that compliance clerks will perform an estimated 0.1 hours of this work and clerical staff will perform the remaining 0.4 hours. Therefore the total cost per adviser would be (0.1 hours x $64 per hour = $6.4) + (0.4 hour x $53 = $21.2) = approximately $28 for a total cost of $324,800 (11,600 advisers x $28).

creating and communicating custom performance information to individual clients, who would then lose the benefit of having that information available to them. Although we believe that such a response to the rule would be unlikely, a decrease in communications could reduce the ability of clients and potential clients to compare advisers and potentially decrease competition.

Included in this cost estimate is our expectation that these costs would vary among firms, depending on a number of factors, including the degree to which advisers already maintain correspondence, performance information, and the inputs and worksheets used to generate performance information. Compliance costs also would vary depending on the degree to which performance figure determination and the recordkeeping process is automated, and the amount of updating to the adviser's recordkeeping policy that would be required.

4. Alternatives

An alternative to the proposed amendments to rule 204-2 would be to not propose the amendments. The proposed amendments are designed to address a potential recordkeeping gap that could limit our ability to examine and oversee advisers and ultimately protect investors. The proposed amendment to require maintenance of the performance calculations and communications regardless of the number of clients or potential clients that receive the information would address this issue. An alternative that would require maintenance of records supporting performance claims in communications that are distributed or circulated to less than the current threshold of ten persons could reduce our ability to examine and oversee advisers. We believe that the limited costs of these amendments are appropriate given its benefits.

D. Request for Comment

We request comment on our estimates and assumptions regarding the costs and benefits of the proposed amendments to Form ADV and certain rules under the Investment Advisers Act. Commenters are requested to provide empirical data to support their views. In addition to our general request for comment on the costs and benefits of the proposed amendments, we request the following specific comment on certain aspects of our economic analysis.

- To what extent would clients and prospective clients use information reported in Form ADV to select or retain investment advisers? Are there other benefits to clients and prospective clients or to other interested parties not outlined above?
- To what extent would advisers benefit from incorporation of umbrella registration into Form ADV?
- Do commenters expect that advisers would incur costs in addition to, or that differ from, the costs we outlined above? In particular, do commenters expect that advisers would incur costs different from the costs we outline above with respect to the collection or retention of additional information?
- What are the benefits and costs of the proposed reporting thresholds for separately managed account information? Are there other thresholds that would increase benefits and be just as costly or provide similar benefits and be more cost effective? Please explain.
- Would any of the effects of these proposed amendments be large enough to affect the behavior of investment advisers or their clients? For instance, would the public disclosure of aggregate separately managed account information raise confidentiality

concerns, and would disclosure impact a client's selection of an investment adviser? Please explain.

IV. PAPERWORK REDUCTION ACT ANALYSIS

Certain provisions of our proposal contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[116] and we are submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The titles for the collections of information we are proposing to amend are: (i) "Form ADV;" and (ii) "Rule 204-2 under the Investment Advisers Act of 1940." 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.

A. Form ADV

Form ADV (OMB Control No. 3235-0049) is the two-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by Commission staff, and Part 2 is the client brochure. We are not proposing changes to Part 2 at this time. We use the information to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients use certain of the information to determine whether to hire or retain an adviser. The collection of information is necessary to provide advisory clients, prospective clients, and the Commission with information about the adviser and its business, conflicts of interest and personnel. Rule 203-1 under the Advisers Act requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204-4

[116] 44 U.S.C. 3501-3520.

under the Advisers Act requires certain investment advisers exempt from registration with the Commission ("exempt reporting advisers") to file reports with the Commission by completing a limited number of items on Form ADV. Rule 204-1 under the Advisers Act requires each registered and exempt reporting adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through the IARD. The paperwork burdens associated with rules 203-1, 204-1, and 204-4 are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information.

These collections of information are found at 17 CFR 275.203-1, 275.204-1, 275.204-4 and 275.279.1 and are mandatory. Responses are not kept confidential. The respondents are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers. Based on IARD system data as of April 2015, approximately 11,600 investment advisers are registered with the Commission, and 2,914 exempt reporting advisers file reports with the Commission.

The currently approved total annual burden estimate for all advisers of completing, amending and filing Form ADV (Part 1 and Part 2) with the Commission is 154,402 hours. This burden is based on an average total hour burden of 40.74 hours per Commission-registered adviser for the first year that an adviser completes Form ADV but excluding private fund reporting.[117]

As discussed above, we are proposing amendments to Form ADV that are designed to provide additional information about investment advisers and their clients, including clients in separately managed accounts, provide for umbrella registration for private fund advisers and

[117] The currently approved one-time initial cost burden for outside legal and compliance consulting fees in connection with initial preparation of Part 2 of Form ADV is $3,600,000. We are not proposing any amendments to Part 2 of Form ADV and therefore we are not modifying this estimate.

clarify and address technical and other issues in certain Form ADV items and instructions. The amendments we are proposing would increase the information requested in Part 1A of Form ADV, and we expect that this would correspondingly increase the average burden to an adviser filing Form ADV.

We discuss below, in three subsections, the estimated revised collection of information requirements for Form ADV: first, we provide estimates for the revised and new burdens resulting from the proposed amendments to Part 1A; second, we determine how those estimates will be reflected in the annual burden attributable to Form ADV; and third, we calculate the total revised burdens associated with Form ADV.

1. Changes in Average Burden Estimates and New Burden Estimates

As a result of the differing burdens on advisers to complete Form ADV, we have divided the effect of the proposed amendments to the form into three subsections; first we address the change to the collection of information for registered advisers as a result of our proposed amendments to Part 1A of Form ADV excluding those changes related to private funds; second, we discuss the proposed amendments to Form ADV related to registered advisers to private funds, including the proposed amendments to Section 7.B. of Schedule D and the proposed new Schedule R that would implement umbrella registration; and third, we address the proposed amendments to Form ADV affecting exempt reporting advisers.

a. Estimated Change in Burden Related to Part 1A Proposed Amendments (Not Including Private Fund Reporting)

We are proposing amendments to Part 1A, some of which are merely technical changes or very simple in nature, and others that would require more time for an adviser to prepare a response. The paperwork burdens of filing an amended Form ADV, Part 1A would vary among

advisers, depending on factors such as the size of the adviser, the complexity of its operations, and the number or extent of its affiliations. Advisers should have ready access to all the information necessary to respond to the proposed items in their normal course of operations because, among other things, they likely maintain and use the proposed requested information in connection with managing client assets. We anticipate that the responses to many of the questions would be unlikely to change from year to year, which would minimize the ongoing reporting burden associated with these questions.

i. Proposed Amendments Related to Reporting of Separately Managed Account Information

The proposed amendments to Part 1A, Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) and Schedule D, Sections 5.K.(1), 5.K.(2) and 5.K.(3) are designed to collect information about the separately managed accounts managed by advisers. Those proposed amendments would enhance existing information we receive and permit us to conduct more robust risk monitoring with respect to advisers of separately managed accounts. As discussed above, the information collected about separately managed accounts would include regulatory assets under management reported by asset type, borrowings and derivatives information, and the identity of custodians that account for at least ten percent of separately managed account regulatory assets under management. We believe much of this information is readily available to advisers to separately managed accounts because, among other things, they may maintain and use this or similar information for operational reasons (*e.g.*, trading systems) and for customary account reporting to clients in separately managed accounts.

Although we understand that much of the proposed information is readily available to advisers to separately managed accounts, we expect that these amendments could subject

advisers, particularly those that advise a large number of separately managed accounts and engage in borrowings and derivatives transactions on behalf of separately managed accounts, to an increased paperwork burden. For this and other reasons, as we explained above, we propose to minimize the burden on advisers with a smaller amount of separately managed account assets under management by proposing to require advisers with regulatory assets under management attributable to separately managed accounts of at least $150 million but less than $10 billion to report borrowings and derivatives information as of the date the adviser calculates its regulatory assets under management for purposes of its annual updating amendment, while those advisers with regulatory assets under management attributable to separately managed accounts of at least $10 billion would report information as of that date and six months before that date.

Considering the proposed changes in Part 1A, Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) and Schedule D, Sections 5.K.(1), 5.K.(2) and 5.K.(3) as well as our efforts to mitigate the reporting burden to advisers that manage a smaller amount of separately managed account regulatory assets under management, we estimate that each adviser will spend, on average, 2 hours to complete the questions regarding separately managed accounts in the first year a new or existing investment adviser completes these questions.[118]

[118] Based on IARD data, as of April 1, 2015, approximately 8,500 registered investment advisers, or approximately 73% of all investment advisers registered with us, reported assets under management from clients other than registered investment companies, business development companies and pooled investment vehicles, indicating that they have assets under management attributable to separately managed accounts. Of those approximately 8,500 advisers, we estimate approximately 535 (approximately 6.3%) reported at least $10 billion in regulatory assets under management from separately managed account clients.

ii. Other Additional Information Regarding Investment Advisers

We are proposing to add several new questions and amend existing questions on Form ADV regarding identifying information, an adviser's advisory business, and affiliations. The proposed questions primarily refine or expand existing questions or request information we believe that advisers already have for compliance purposes. For example, we propose to require each adviser to provide Central Index Key (CIK) numbers if it has one or more such numbers and to provide identifying information for social media platforms that it uses. Other proposed questions would require advisers to provide readily available or easily accessible information, such as the proposed amendment to Part IA, Item 1.O. that would require advisers to report their assets within ranges. However, some of the proposed questions may take longer for advisers to complete, such as the proposed amendments to Schedule D, Section 1.F that would require information about an adviser's 25 largest offices other than its principal office and place of business. While this information is readily available to an adviser because it should be aware of its offices, a clerk would be required to manually enter expanded information about the adviser's offices in the first year the adviser responds to the proposed item and then make updates in subsequent years.

We are proposing a number of amendments to Item 5 in addition to the questions relating to separately managed accounts discussed above. Like other new or revised items, we believe several of these new Item 5 questions would merely require advisers to provide readily available or easily accessible information, such as the number of clients and regulatory assets under management attributable to each category of clients during the last fiscal year. Advisers currently provide this information in ranges, and therefore likely already have available to them the more precise numbers to report. In addition, information such as whether the adviser uses

different assets under management numbers in Part 1A vs. Part 2A of Form ADV should be readily available. Other proposed items would likely present greater burdens for some advisers but not others, depending on the nature and complexity of their businesses. For instance, the burden associated with the proposed disclosure regarding wrap fee programs or non-U.S. clients would depend on whether and to what extent an adviser allocates client assets to wrap fee programs or the extent to which the adviser has non-U.S. clients.

We estimate that these proposed amendments to Part 1A of Form ADV and Schedule D would take each adviser approximately 1 hour, on average, to complete in the first year a new or existing adviser responds to these proposed questions. We have arrived at this estimate, in part, by comparing the relative complexity and availability of the information required by the proposed amended items to the current form and its approved burden, and by considering the advisers affected by the proposed amendments.

iii. Proposed Clarifying, Technical and Other Amendments

We are proposing several further amendments to Form ADV that are designed to clarify the Form and its instructions and address technical issues. These proposed changes primarily refine existing questions, such as deleting the phrase "newly formed adviser" from Part IA, Item 2.A.(9) because of questions from filers about whether that phrase refers to only newly formed corporate entities, and the proposed amendments to Part IA, Item 8.B.(2) to clarify that the question applies to any related person who recommends the adviser to advisory clients or acts as a purchaser representative. Because these proposed changes do not change the scope or amount of information required to be reported on Form ADV, we do not believe that these proposed clarifying, technical and other amendments to Part 1A of Form ADV would increase

or decrease the average total collection of information burden for advisers in their first year filing Form ADV.

As a result of the proposed amendments to Form ADV Part 1A discussed above, including the proposed amendments related to separately managed accounts, additional items and technical and clarifying amendments, we estimate the average total collection of information burden would increase 3 hours to 43.74 hours per adviser for the first year that an adviser completes Form ADV (Part 1 and Part 2).[119]

b. Estimated Changes in Burden Related to Private Fund Reporting Requirements

We propose several amendments to Part 1A, Schedule D, Section 7.B. that refine and enhance existing information we receive about advisers to private funds. In addition, as part of our proposal to provide for umbrella registration, we propose a new schedule to Part 1A – Schedule R – to be submitted by advisers to private funds that use umbrella registration to file a single Form ADV.

We believe the information required by the few proposed amendments to Part 1A, Schedule D, Section 7.B would be readily available or easily accessible to advisers to private funds, such as information about the percentage of a private fund owned by qualified clients, and the PCAOB registration number for a private fund auditor. Other amendments to Section 7.B. are designed to make the questions easier to answer, but do not cause a change in reporting burden, including moving certain "notes" to questions and changes to the current question

[119] Currently approved estimate of the average total collection if information burden per SEC registered adviser for the first year that an adviser completes Form ADV (40.74 hours) + 2 hours to complete the proposed questions about separately managed accounts + 1 hour to complete other additional information regarding investment advisers = 43.74 hours.

regarding unqualified opinions. The currently approved total annual burden estimate for advisers making their initial filing in completing Item 7.B. and Schedule D, Section 7.B. is 1 hour per private fund. We do not estimate that the proposed amendments to Schedule D, Section 7.B would increase or decrease the total annual burden because the information is readily available to advisers.

The proposal to incorporate umbrella registration into Form ADV would codify a staff position and provide a method for certain private fund advisers that operate as a single advisory business to file a single registration form. Umbrella registration would only be available if the filing adviser and each relying adviser advise only private funds and clients in separately managed accounts that are qualified clients, as defined in rule 205-3 under the Advisers Act, that are otherwise eligible to invest in the private funds advised by the filing or a relying adviser. The filing and relying advisers would also have to satisfy certain requirements, including that each relying adviser is controlled by or under common control with the filing adviser. There has been staff guidance for single registration under defined circumstances since 2012,[120] and the proposed amendments to Form ADV would provide for umbrella registration and simplify the process of umbrella registration for advisers constituting a single advisory business. We are proposing a new schedule to Part 1A, Schedule R, that would have to be filed with respect to each relying adviser, as well as a new question to Schedule D that would link private funds reported on Form ADV to the specific (filing or relying) adviser that advises it. Schedule R would require identifying information, basis for SEC registration, and ownership information about each relying adviser.

[120] *See* 2012 ABA Letter, *supra* note 9.

We believe that much of the information we are proposing to include in Schedule R should be readily available to private fund advisers because it is information that they are already reporting either on Form ADV filings for separate advisers or on a single Form ADV filing, in reliance on the staff guidance. Accordingly, although these proposed requirements would be an increase in the information collected, the increased burden should largely be attributable to data entry and not data collection. Furthermore, some advisers who currently separately file Form ADV for each of their advisers may cumulatively have a reduced Form ADV burden by switching to umbrella registration should the new process be codified and Schedule R available. We also believe that new filing advisers using umbrella registration would readily have information available about relying advisers, because they are operating as a single advisory business.

There is no currently approved annual burden estimate of completing Schedule R because it is a new Schedule. Taking into account the scope of information we propose to request, our understanding that much of the information is readily available and currently required on Form ADV, and our belief that many private fund advisers that file an umbrella registration will have only a small number of relying advisers,[121] we estimate that advisers to private funds that elect to rely on umbrella registration will spend on average 1 hour per filing adviser completing new Schedule R for the first time.

[121] Based on IARD data as of April1, 2015, approximately 750 investment advisers rely on the 2012 ABA Letter to file Form ADV on behalf of themselves and 2,500 relying advisers, an average of approximately 3 relying advisers per filing adviser.

c. Estimated Changes in Burden Related to Exempt Reporting Adviser Reporting Requirements

Exempt reporting advisers are required to complete a limited number of items in Part 1A of Form ADV (consisting of Items 1, 2.B., 3, 6, 7, 10, 11 and corresponding schedules), and are not required to complete Part 2 and would not be eligible to file proposed Schedule R. The proposed amendments to Part 1A would revise only Items 1 and 7 for exempt reporting advisers. We believe the information required by these proposed revisions should be readily available to any adviser as part of their ongoing operations and management of client assets, and, moreover, are unlikely to require additional reporting for most exempt reporting advisers. For instance, we estimate that almost all exempt reporting advisers currently have five or fewer offices (the number of offices currently required by Form ADV) and thus would not have to provide information on additional offices.[122] Accordingly, we do not expect that the proposed amendments would increase or decrease the currently approved total annual burden estimate per exempt reporting adviser initially completing these items in Form ADV, other than Item 7.B., of 2 hours. We also do not expect that the proposed amendments would increase or decrease the currently approved total annual burden estimate per exempt reporting adviser initially completing Item 7.B. and Section 7.B. of Schedule D of 1 hour per private fund.

[122] Based on IARD data as of April 1, 2015, only 17 ERAs reported on Form ADV that they had five or more other offices.

2. Annual Burden Estimates

a. Estimated Annual Burden Applicable to All Registered Investment Advisers

i. Estimated Initial Hour Burden (Not Including Burden Applicable to Private Funds) For First Year Adviser Completes Form ADV (Part 1 and Part 2)

We estimate that, as a result of the proposed amendments to Form ADV Part 1A discussed above, other than those applicable to private funds, the average total collection of information burden per respondent would increase 3 hours to 43.74 hours per adviser for the first year that an adviser completes Form ADV (Part 1 and Part 2).

Approximately 11,600 investment advisers are currently registered with the Commission.[123] Not including private fund reporting, the estimated aggregate annual burden applicable to these advisers would be 507,384 hours[124] (34,800 hours of it attributable to the proposed amendments).[125] As with the Commission's prior Paperwork Reduction Act estimates for Form ADV, we believe that most of the paperwork burden would be incurred in advisers' initial submission of the amended Form ADV, and that over time this burden would decrease substantially because the paperwork burden would be limited to updating information.[126]

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123 Based on IARD data as of April 1, 2015. We include currently registered advisers in the estimated initial hour burden calculation because, for purposes of estimating burdens under the Paperwork Reduction Act, we assume that every new and existing registered adviser completes an initial registration in a three year period, which is the period after which estimates are required to be renewed.

124 43.74 hour per-adviser burden x 11,600 advisers = 507,384 hours.

125 3 hour per-adviser additional burden x 11,600 advisers = 34,800 hours.

126 We discuss the burden for advisers making annual updating amendments to Form ADV in section iii below.

Amortizing the burden imposed by Form ADV over a three-year period to reflect the anticipated period of time that advisers would use the revised Form would result in an average annual burden of an estimated 169,128 hours per year[127] (11,600 hours per year of it attributable to the proposed amendments),[128] or 14.58 hours per year for each adviser currently registered with the Commission.[129]

Based on IARD system data, we estimate that there will be approximately 1,000 new investment advisers filing Form ADV with us annually. Therefore, we estimate that the total annual burden applicable to these advisers for the first year that they complete Form ADV but excluding private fund reporting requirements is 43,740 hours (1,000 advisers x 43.74 hours). Amortizing the burden imposed by Form ADV for new registrants over a three-year period to reflect the anticipated period of time that advisers would use the revised Form would result in an average annual burden of an estimated 14,580 hours per year[130] (1,000 of it attributable to the proposed amendments).[131] We therefore estimate the total hour burden to be 183,708 hours per year.[132]

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127 507,384 hours/3 = 169.128 hours.

128 34,800 hours/3 = 11,600 hours.

129 169,128 hours/11,600 advisers = 14.58 hours.

130 43,740 hours/3 = 14,580 hours.

131 3,000 hours/3 = 1,000 hours.

132 14,580 hours for new registrants + 169,128 hours for existing registrants = 183,708 hours.

ii. Estimated Initial Hour Burden Applicable to Registered Advisers to Private Funds

The amount of time that a registered adviser managing private funds would incur to complete Item 7.B. and Section 7.B. of Schedule D will vary depending on the number of private funds the adviser manages. Of the advisers currently registered with us, we estimate that approximately 4,364 registered advisers advise a total of 28,532 private funds, and, on average, 300 SEC-registered advisers annually would make their initial filing with us reporting approximately 1,100 private funds.[133] The currently approved annual burden estimate for advisers making their initial filing in completing Item 7.B. and Schedule D, Item 7.B. is 1 hour per private fund. As a result, we estimate that the private fund reporting requirements that are applicable to registered investment advisers would add 29,632 hours to the overall annual burden applicable to registered advisers.[134] As noted above, we believe most of the paperwork burden would be incurred in connection with advisers' initial submission of Form ADV, and that over time the burden would decrease substantially because it would be limited to updating (instead of compiling) information. Amortizing this burden over three years, as we did above with respect to the initial filing of the rest of the form, results in an average estimated burden of 9,877 hours per year.[135]

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133 Based on IARD data as of April 1, 2015. We include existing funds of currently registered advisers in the estimated initial hour burden calculation because, for purposes of estimating burdens under the Paperwork Reduction Act, we assume that every existing registered adviser completes an initial filing completing Item 7.B and Schedule D, Item 7.B per fund in a three year period, which is the period after which estimates are required to be renewed.

134 1 hour x 28,532 private funds = 28,532 hours. 1 hour x 1,100 private funds = 1,100 hours. 28,532 hours + 1,100 hours = 29,632 hours.

135 29,632 hours/3 = 9,877 hours.

We also propose a new Schedule R to Form ADV for umbrella filing. Of the advisers currently registered with us, we estimate based on current Form ADV filings that approximately 750 registered advisers currently submit a single Form ADV on behalf of themselves and approximately 2,500 relying advisers.[136] Taking into account the scope of information we propose to request and our understanding that much of the information is readily available and is already reported by advisers, we estimate that advisers to private funds that elect to rely on umbrella registration will spend 1 hour per filing adviser completing new Schedule R. As a result, we estimate that umbrella registration would add 750[137] hours to the annual burden applicable to registered advisers. We estimate that, on average, 65 SEC registered advisers annually would make their initial filing with us as filing advisers, increasing the overall annual burden for advisers to private funds an additional 65 hours, or 815 hours in total. Amortizing these hours for a three year period as with the rest of the burdens associated with Form ADV, results in 272 additional hours per year.[138]

iii. Estimated Annual Burden Associated With Amendments, New Brochure Supplements, and Delivery Obligations

The current approved collection of information burden for Form ADV has three elements in addition to those discussed above: (1) the annual burden associated with annual and other amendments to Form ADV; (2) the annual burden associated with creating new Part 2 brochure supplements for advisory employees throughout the year; and (3) the annual burden associated

136 Based on IARD data as of April 1, 2015.

137 750 filing advisers x 1 hour per completing Schedule R = 750 hours.

138 815 hours/3 = 271.66 hours.

with delivering codes of ethics to clients as a result of the offer of such codes contained in the brochure. We anticipate that our proposed amendments to Form ADV would increase the currently approved annual burden estimate associated with annual amendments to Form ADV from 6 hours to 7 hours per adviser, but would not impact interim updating amendments to Form ADV.

We continue to estimate that, on average, each adviser filing Form ADV through the IARD will likely amend its form two times during the year. We estimate, based on IARD data, that advisers, on average, make one interim updating amendment (at an estimated 0.5 hours per amendment) and one annual updating amendment (at an estimated 7 hours per amendment) each year. [139]

In addition, the currently approved annual burden estimates are that each investment adviser registered with us will, on average, spend 1 hour per year making interim amendments to brochure supplements, [140] and an additional 1 hour per year to prepare new brochure supplements as required by Part 2. [141] The currently approved annual burden estimate is that advisers spend an average of 1.3 hours annually to meet obligations to deliver codes of ethics to clients. [142] We are not changing these estimates as the proposed amendments do not affect these requirements. Therefore we estimate the total annual burden for advisers registered with us attributable to

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139 (11,600 advisers x 0.5 hours/other than annual amendment) + (11,600 advisers x 7 hours/annual amendment) = 87,000 hours.

140 11,600 hours attributable to interim amendments to the brochure supplements = 11,600 advisers x 1 hour = 11,600 hours.

141 11,600 hours attributable to new brochure supplements = 11,600 advisers x 1 hour = 11,600 hours.

142 15,080 hours for the delivery of codes of ethics = 11,600 advisers x 1.3 hours = 15,080 hours.

amendments, brochure supplements and obligations to deliver codes of ethics to be 125,280 hours.[143]

iv. Estimated Annual Cost Burden

The currently approved total annual collection of information burden estimate for Form ADV has a one-time initial cost for outside legal and compliance consulting fees in connection with the initial preparation of Part 2 of Form ADV. We do not anticipate that the amendments we are proposing to Form ADV will affect the per adviser cost burden estimates for outside legal and compliance consulting fees. In addition to the estimated legal and compliance consulting fees, investment advisers of private funds incur costs with respect to the requirement for investment advisers to report the fair value of private fund assets.

We expect that 1,000 new advisers will register annually with the Commission. We estimate that the initial cost related to preparation of Part 2 of Form ADV would be $4,400 for legal services and $5,000 for compliance consulting services, in each case, for those advisers who engaged legal counsel or consultants. We anticipate that a quarter of these advisers would seek the help of outside legal services and half would seek the help of compliance consulting services. Accordingly, we estimate that 250 of these advisers would use outside legal services, for a total cost burden of $1,100,000,[144] and 500 advisers would use outside compliance consulting services, for a total cost burden of $2,500,000,[145] resulting in a total cost burden

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143 87,000 hours + 11,600 hours + 11,600 hours + 15,080 hours = 125,280 hours.

144 25% x 1000 SEC registered advisers = approximately 250 advisers. $4,400 for legal services x 250 advisers = $ 1,100,000.

145 50% x 1000 SEC registered advisers = 500 advisers. $5,000 for consulting services x 500 advisers = $2,500,000.

among all respondents of $3,600,000 for outside legal and compliance consulting fees related to drafting narrative brochures.[146]

We estimate that 3% of registered advisers have at least one private fund client that may not be audited. These advisers therefore may incur costs to fair value their private fund assets. Based on current IARD data, 4,364 registered advisers currently advise private funds. We therefore estimate that approximately 131 registered advisers may incur costs of $37,625 each on an annual basis, for an aggregate annual total cost of $4,928,875.[147]

Together, we estimate that the total cost burden among all respondents for outside legal and compliance consulting fees related to third party or outside valuation services and for drafting outside legal and compliance consulting fees to be $8,528,875.[148]

b. Estimated Annual Burden Applicable to Exempt Reporting Advisers

i. Estimated Initial Hour Burden

Based on IARD system data, there are approximately 2,914 exempt reporting advisers currently filing reports with the SEC.[149] The paperwork burden applicable to these exempt reporting advisers consists of the burden attributable to completing a limited number of items in

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146 $1,100,000 + $2,500,000 = $3,600,000.

147 131 advisers x $37,625 = $4,928,875.

148 $3,600,000 + $4,928,875 = $8,528,875.

149 Based on IARD data as of April 1, 2015. We include existing exempt reporting advisers and their private funds in the estimated initial hour burden calculation because, for the purpose of estimating burdens under the Paperwork Reduction Act, we assume that every new and existing exempt reporting adviser completes an initial Form ADV in a three year period, which is the period after which estimates are required to be renewed.

Form ADV Part 1A as well as the burden attributable to the private fund reporting requirements of Item 7.B. and Section 7.B. of Schedule D.

The currently approved estimate of the average total collection of information burden per exempt reporting adviser for the first year that an exempt reporting adviser completes a limited subset of Part 1 of Form ADV, other than Item 7.B. and Section 7.B. of Schedule D, is 2 hours. As discussed above, we do not anticipate that our proposed amendments to Form ADV would affect the per exempt reporting adviser burden estimate. Based on IARD system data, we estimate that there will be 500 new exempt reporting advisers filing Form ADV annually. Therefore, we estimate that the total annual burden applicable to the existing and new exempt reporting advisers for the first year that they complete Form ADV but excluding private fund reporting requirements is 6,828 hours.[150] Amortizing the burden imposed by Form ADV over a three-year period to reflect the anticipated period of time that advisers would use the revised Form ADV results in an average annual burden of an estimated 2,276 hours per year.[151]

As discussed above, we estimate the burden of completing Item 7.B. and Section 7.B. of Schedule D to be 1 hour per private fund. We do not anticipate that our proposed amendments to Form ADV would affect the per exempt reporting adviser burden of completing Item 7.B. and Section 7.B. of Schedule D. Based on IARD data, we estimate that, on average, the 2,914 current exempt reporting advisers will report 9,896 funds and the projected 500 new exempt reporting advisers making their initial filing will report approximately 1,000 funds, resulting in a

[150] 2 hours x (2,914 reporting exempt reporting advisers + 500 new exempt reporting advisers) = 6,828 hours.

[151] 6,828 hours / 3 = 2,276 hours.

total annual burden of 10,896 hours.[152] Amortizing this total burden over three years as we did above for registered advisers results in an average burden of an estimated 3,632 hours per year,[153] or approximately 1 hour per year, on average, for each exempt reporting adviser.[154]

ii. Estimated Annual Burden Associated With Amendments and Final Filings

In addition to the burdens associated with initial completion and filing of the portion of the form that exempt reporting advisers are required to prepare, we estimate that, based on IARD data, each exempt reporting adviser would amend its form 2 times per year. On average, these consist of one interim updating amendment (at an estimated 0.5 hours per amendment)[155] and one annual updating amendment (at an estimated 1 hour per amendment)[156] each year. In addition, we anticipate 200 final filings by exempt reporting advisers annually (at an estimated 0.1 hours per filing).[157] We do not anticipate that our proposed amendments to Form ADV would affect the per exempt reporting adviser burden. The total annual burden associated with exempt reporting advisers filing amendments and final filings is 4,391 hours.[158]

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152 9,896 funds + 1,000 funds = 10,896 funds. 10,896 x 1 hour = 10,896 hours.

153 10,896 hours /3 years = 3,632 hours per year.

154 3,632 hours per year/3,414 exempt reporting advisers = 1 hour per year.

155 2,914 x .5 hours = 1,457 hours.

156 2,914 x 1 hour = 2,914 hours.

157 200 x 0.1 hours = 20 hours.

158 1,457 hours + 2,914 hours + 20 hours = 4,391 hours. Exempt reporting advisers are not required to complete Part 2 of Form ADV and so will not incur an hour burden to prepare new brochure supplements or the cost for preparation of the brochure. Exempt reporting advisers also do not have an obligation to deliver codes of ethics to clients as required by Part 2 of Form ADV.

3. Total Revised Burdens

The revised total annual collection of information burden for SEC registered advisers to file and complete the revised Form ADV (Parts 1 and 2), including the initial burden for both existing and anticipated new registrants, private fund reporting, plus the burden associated with amendments to the form, preparing brochure supplements and delivering codes of ethics to clients, is estimated to be approximately 319,137 hours per year, for a monetized total of $79,784,000.[159]

The revised total annual collection of information burden for exempt reporting advisers to file and complete the required Items of Part 1A of Form ADV, including the burdens associated with private fund reporting, amendments to the form and final filings, would be approximately 10,299 hours per year, for a monetized total of $2,574,500.[160]

We estimate that if the proposed amendments to Form ADV are adopted, the total annual hour burden for the form would be 329,436 hours and a monetized total of $82,358,500.[161] This

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[159] 183,708 hours per year attributable to initial preparation of Form ADV + 9,877 hours per year attributable to initial private fund reporting requirements + 272 hours per year for initial umbrella registration + 125,280 hours per year for attributable to amendments, brochure supplements and obligations to deliver codes of ethics = 319,137 hours. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. Data from the SIFMA *Management and Professional Earnings Report*, modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. (159,568 hours x $217) + (159,568 hours x 283) = $79,784,000.

[160] 2,276 hours per year attributable to initial preparation of Form ADV + 3,632 hours per year attributable to initial private fund reporting requirements + 4,391 hours per year for amendments and final filings = 10,299 hours. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. Data from the SIFMA *Management and Professional Earnings Report*, modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. (5,149 x $217) + (5,149 x $283) = $2,574,500.

[161] 319,137 hours + 10,299 hours = 329,436 hours. $79,784,000 + $2,574,500 = $82,358,500.

is an increase of 175,034 hours and $45,688,073 from the currently approved burden estimates,[162] which is attributable primarily to the currently approved burden estimates not considering the amortized annual burden of Form ADV on existing registered advisers and exempt reporting advisers. The resulting blended average per adviser burden for Form ADV is 22.69 hours (for a monetized total of $5,674.42),[163] which consists of an average annual burden of 27.51 hours[164] for each of the estimated 11,600 SEC registered advisers, and 3.53 hours[165] for each of the estimated 2,914 exempt reporting advisers.

Registered investment advisers are also expected to incur an annual cost burden of $8,528,875, an increase of $4,928,875 from the current approved cost burden estimate of $3,600,000. The increase in annual cost burden is attributable to the currently approved burden not considering the cost to advisers to fair value private fund assets.

B. Rule 204-2

Rule 204-2 (OMB Control No. 3235-0278) requires investment advisers registered, or required to be registered under section 203 of the Act, to keep certain books and records relating to their advisory business. The collection of information under rule 204-2 is necessary for the Commission staff to use in its examination and oversight program, and the information is generally kept confidential.[166] The collection of information is mandatory.

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[162] 329,436 hours - 154,402 hours = 175,034 hours. $82,358,500 - $36,670,427 = $45,688,073.

[163] 329,436 hours / (11,600 registered advisers + 2,914 exempt reporting advisers) = 22.69 hours. $82,358,500 / (11,600 registered advisers + 2,914 exempt reporting advisers) = $5,674.42.

[164] 319,137 hours / 11,600 registered advisers = 27.51 hours.

[165] 10,299 hours / 2,914 exempt reporting advisers = 3.53 hours.

[166] *See* section 210(b) of the Advisers Act.

The proposed amendments to rule 204-2 would require investment advisers to make and keep the following records: (i) documentation necessary to demonstrate the calculation of the performance the adviser distributes to any person, and (ii) all written communications received or sent relating to the adviser's performance.

The currently approved total annual burden for rule 204-2 is based on an estimate of 10,946 registered advisers subject to rule 204-2 and an estimated average burden of 181.45 burden hours each year per adviser, for a total of 1,986,152 hours. Based upon updated IARD data, the current approximate number of investment advisers is 11,600. As a result in the increase in the number of advisers registered with the Commission since the current total annual burden estimate was approved, the total burden estimate has increased by 118,668 hours.[167] We estimate that most advisers provide, or seek to provide, performance information to their clients. Under the proposed amendments, each adviser would be required to retain the records in the same manner, and for the same period of time, as other books and records under rule. We believe that the documentation necessary to support the performance calculations is customarily maintained, or required to be maintained by advisers already in account statements or portfolio management systems. We also believe that most advisers already maintain this information in their books and records, in order to show compliance with the Advisers Act advertising rule, rule 206(4)-1. Accordingly, the proposed amendments to rule 204-2 are estimated to increase the burden by approximately 0.5 hours per adviser annually for a total increase of 5,800 hours.[168]

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[167] 11,600 advisers x 181.45 hours = 2,104,820 hours. 2,104,820 hours – 1,986,152 hours = 118,668 hours.

[168] 11,600 advisers x 0.5 hours = 5,800 hours.

The revised annual aggregate burden would be 2,110,620 hours.[169] The revised average burden per adviser would be approximately 182 hours per year.[170]

Advisers would likely use a combination of compliance clerks and general clerks to make and keep the information and records required under the rule. The currently approved total cost burden is $108,708,557.10. We estimate the hourly wage for compliance clerks to be $64 per hour, including benefits, and the hourly wage for general clerks to be $53 per hour, including benefits.[171] For each adviser, 182 burden hours would be required to make and keep the information and records required under the rule. We anticipate that compliance clerks will perform an estimated 32 hours of this work, and clerical staff will perform the remaining 150 hours. The total cost per respondent therefore will be an estimated $9,998,[172] for a total burden cost of approximately $115,976,800,[173] an increase of $7,268,243 from the currently approved total cost per respondent.[174] The increase in cost is attributable to a larger registered investment adviser population since the most recent approval as well as the proposed rule 204-2 amendments discussed in this release.

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169 1,986,152 (current approved burden) + 118,668 (burden for additional registrants) + 5,800 (burden for proposed amendments) = 2,110,620 hours.

170 2,110,620 hours/11,600 advisers = 181.9 hours.

171 Our hourly wage rate estimate for a compliance manager and compliance clerk is based on data from the SIFMA *Office Salaries in the Securities Industry Report 2013*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35, for compliance clerks to account for bonuses, firm size, employee benefits and overhead.

172 (32 hours per compliance clerk x $64) + (150 hours per clerical staff x $53) = ($2,048 + $7,950) = $9,998.

173 $9,998 per adviser x 11,600 advisers = approximately $115,976,800.

174 $115,976,800 - $108,708,557 = $7,268,243.

C. Request for Comment

We request comment on whether our estimates for the change in burden hours and associated costs described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The agency has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-09-15. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-09-15, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE, Washington, DC 20549-2736.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") in accordance with section 3(a) of the Regulatory Flexibility Act[175] regarding our proposed amendments to Form ADV and rule 204-2 and our proposed technical amendments to certain other rules under the Advisers Act.

A. Reason for the Proposed Action

The proposed amendments to Form ADV are designed to provide the Commission with additional information about registered investment advisers, including information about separately managed accounts, provide for umbrella registration for multiple investment advisers operating as a single advisory business, and provide technical, clarifying and other amendments to certain Form ADV provisions. The proposed amendments to Form ADV would improve the information provided by investment advisers to the Commission and the public.

We are also proposing amendments to the Advisers Act books and records rule that would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly or indirectly, to any person. We believe that the proposed amendments to the books and records rule would improve investor protections by providing useful information in examining and evaluating advisers' performance claims.

Finally, we are proposing technical amendments to certain rules under the Advisers Act to remove transition provisions where the transition process is complete.

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175 5 U.S.C. 603(a).

B. Objectives and Legal Basis

The proposed amendments to Form ADV would address certain data gaps and enhance current reporting provided by investment advisers, particularly about separately managed accounts, in order to increase our ability to effectively oversee and monitor their activities, and to incorporate umbrella registration for private fund advisers that operate as a single advisory business. The proposed amendments to the Advisers Act books and records rule would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly and indirectly, to any persons.

The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)]. The Commission is proposing to amend rule 204-2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b-4 and 80b-11]. The Commission is proposing to amend rule 202(a)(11)(G)-1 pursuant to authority in sections 202(a)(11)(G) and 206A of the Advisers Act [15 U.S.C. 80b-2(a)(11)(G) and 80b-6A]. The Commission is proposing to amend rule 203-1 pursuant to authority in section 206A of the Advisers Act [15 U.S.C. 80b-6A]. The Commission is proposing to rescind rule 203A-5 and amend rule 204-1 pursuant to authority in sections 204 and 211(a) of the Advisers Act [15 U.S.C. 80b-4 and 80b-11(a)].

C. Small Entities Subject to the Rule and Rule Amendments

In developing these proposals, we have considered their potential impact on small entities that would be subject to the proposed amendments. The proposed amendments would affect all advisers registered with the Commission and exempt reporting advisers, including small entities. Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year. [176]

Our proposed rule and Form ADV amendments would not affect most advisers that are small entities ("small advisers") because they are generally registered with one or more state securities authorities and not with us. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of April 1, 2015, approximately 489 advisers that are small entities are registered with the Commission.[177] Because these entities are registered, they, like all SEC-registered investment advisers, would all be subject to the proposed amendments to Form ADV, rule 204-2 and other Advisers Act rules.

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176 Rule 0-7(a) under the Advisers Act.

177 Based on SEC-registered investment adviser responses to Form ADV, Item 5.F and Item 12.

The only small entity exempt reporting advisers that would be subject to the proposed amendments would be exempt reporting advisers that maintain their principal office and place of business in Wyoming or outside the United States. Advisers with less than $25 million in assets under management generally are prohibited from registering with us unless they maintain their principal office and place of business in Wyoming or outside the United States. Exempt reporting advisers are not required to report regulatory assets under management on Form ADV and therefore we do not have a precise number of exempt reporting advisers that are small entities. Exempt reporting advisers are required to report in Part 1A, Schedule D the gross asset value of each private fund they manage.[178] Based on responses to that question, we estimate that there is approximately 1 exempt reporting adviser with its principal office and place of business in Wyoming that meets the definition of small entity. Advisers with their principal office and place of business outside the United States may have additional assets under management other than what is reported in Schedule D. Based on IARD filings, approximately 18% of registered investment advisers with their principal office and place of business outside the U.S. are small entities. There are approximately 1,148 exempt reporting advisers with their principal office and place of business outside the U.S. We estimate that 18% of those advisers, approximately 206, are small entities.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Form ADV and rule 204-2 would impose certain reporting, recordkeeping, and compliance requirements on all Commission-registered advisers, including small advisers. All Commission-registered small advisers would be required to file Form ADV,

[178] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).A , Question 11.

including the proposed amendments, and all Commission-registered small advisers would be subject to the proposed amended recordkeeping requirements. We do not believe that our proposed technical amendments to other Advisers Act rules would impose different reporting, recordkeeping, or other compliance requirements on small advisers.

Proposed Form ADV Amendments

The proposed amendments to Form ADV would require registered investment advisers to report different or additional information than what is currently required. Approximately 489 small advisers currently registered with us would be subject to these requirements. We expect these 489 small advisers to spend, on average, 3 hours to respond to the proposed new and amended questions, not including items relating to private fund reporting.[179] We expect the aggregate cost to small advisers associated with this process would be $366,500.[180]

In addition, of these 489 small advisers, we estimate that 4 small advisers currently rely on the 2012 ABA Letter to act as filing advisers for their relying advisers.[181] We expect that our proposed changes to codify umbrella registration would take 4 hours[182] in the aggregate, at a cost to small advisers of $1,000. [183] We do not know how many additional small advisers would use

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179 *See supra* section IV. of this release.

180 We expect that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA *Management and Professional Earnings Report*, modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. 489 small advisers x 3 hours = 1,467 hours. [733 hours x $217 = $159,061] + [733 hours x $283 = $207,439] = $366,500.

181 Based on IARD data as of April 1, 2015.

182 For purposes of the Paperwork Reduction Act, we estimated in section IV. of this release that amendments to codify umbrella registration would take an additional 1 hour per filing adviser.

183 As discussed in connection with the Paperwork Reduction Act, we expect that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager.

umbrella registration if it was incorporated into Form ADV. We estimate for purposes of the Paperwork Reduction Act that they would also have a burden of 1 hour per filing adviser.

We do not estimate any increase or decrease in burden related to our proposed amendments for private fund advisers, other than the hours related to proposed Schedule R or for exempt reporting advisers. The total estimated labor costs associated with our amendments that we expect will be borne by small advisers is $367,500.[184]

Proposed Amendments to Books and Records Rule

Our proposed amendments to rule 204-2's performance information recordkeeping provisions are meant to require investment advisers to make and keep the following records: (i) documentation necessary to demonstrate the calculation of the performance the adviser distributes to any person, and (ii) all written communications received or sent relating to the adviser's performance. These amendments would create reporting, recordkeeping, and other compliance requirements for small advisers. As discussed in the Paperwork Reduction Act Analysis in section IV. above, the proposed amendments to rule 204-2 would increase the burden by approximately 0.5 hours per adviser. We expect the aggregate cost to small advisers associated with our proposed amendments would be $13,415.[185]

Data from the SIFMA *Management and Professional Earnings Report*, modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. 4 filing advisers x 1 hour = 4 hours. [2 hours x $217 = $434] + [2 hours x $283 = 566] = $1,000.

184 $366,500 + $1,000 = $367,500. These costs are discussed in Paperwork Reduction Act Analysis in section IV. of the release.

185 As discussed in connection with the Paperwork Reduction Act, we expect that performance of this function will most likely be allocated between compliance clerks and general clerks with compliance clerks performing 17% of the function and general clerks performing 83% of the function. Data from the SIFMA *Office Salaries in the Securities Industry Report 2013*, modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe there are no federal rules that duplicate, overlap, or conflict with the proposed rule and form amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed Form ADV and rule amendments, the Commission considered the following alternatives: (i) the establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed Form ADV and rule amendments for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed Form ADV and rule amendments, or any part thereof, for such small entities.

Regarding the first and second alternatives, for certain proposed reporting requirements regarding separately managed accounts on Form ADV, we propose to require semi-annual information filed annually for advisers with regulatory assets under management attributable to separately managed accounts of $10 billion or more and annual information for other advisers.[186] Requiring less detailed reporting on these items for advisers with less than $10 billion is designed to balance our regulatory needs for this type of information while seeking to minimize

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costs for these positions are $64 and $53, respectively. 489 small advisers x 0.5 hours = 244.5 hours. [0.17 x 244.5 hours x $64 = $2,660] + [0.83 x 244.5 hours x $53 = $10,755] = $13,415.

186 Proposed Form ADV, Part 1A, Schedule D, Sections 5.K.(1).

the reporting burden on advisers that manage a smaller amount of separately managed account assets where appropriate.

Regarding the first and fourth alternatives for the other proposed amendments to Form ADV and Advisers Act rules, we do not believe that different compliance or reporting requirements or an exemption from coverage of the Form ADV and rule amendments, or any part thereof, for small entities, would be appropriate. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small advisers, it would be inconsistent with the purposes of the Act to specify differences for small entities under the proposed amendments.

Regarding the second alternative for the other proposed amendments to Form ADV and the Advisers Act rules, we will continue to consider whether further clarification, consolidation, or simplification of the compliance requirements is feasible or necessary, but we believe that the current proposal is clear. The remaining Form ADV amendments do not change that all SEC-registered advisers use a single form, Form ADV, and an existing filing system, IARD, for reporting and registration purposes, and this would not change for small entities. With respect to the rule 204-2 amendments, we believe that the same requirements should apply to all advisers to permit our staff to more effectively examine them.

Regarding the third alternative, we consider using performance rather than design standards with respect to the proposed amendments to Form ADV and rule 204-2 to be inconsistent with our statutory mandate to protect investors, as advisers must provide certain registration information and maintain books and records in a uniform and quantifiable manner so that it is useful to our regulatory and examination program.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. We solicit comment on the number of small entities subject to the proposed Form ADV and rule amendments; and whether the proposed Form ADV and rule amendments discussed in this release could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VI. CONSIDERATION OF IMPACT ON THE ECONOMY

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[187] we must advise OMB whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. STATUTORY AUTHORITY

The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange

[187] Public Law 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)]. The Commission is proposing to amend rule 204-2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b-4 and 80b-11]. The Commission is proposing to amend rule 202(a)(11)(G)-1 pursuant to authority in sections 202(a)(11)(G) and 206A of the Advisers Act [15 U.S.C. 80b-2(a)(11)(G) and 80b-6A]. The Commission is proposing to amend rule 203-1 pursuant to authority in section 206A of the Advisers Act [15 U.S.C. 80b-6A]. The Commission is proposing to rescind rule 203A-5 and amend rule 204-1 pursuant to authority in sections 204 and 211(a) of the Advisers Act [15 U.S.C. 80b-4 and 80b-11(a)].

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements; Securities.

TEXT OF RULE AND FORM AMENDMENTS

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 275 – RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.

2. Amend § 275.202(a)(11)(G)-1 by removing paragraph (e).

3. Amend § 275.203-1 by:

    a. In paragraph (a) removing the phrase “Subject to paragraph (b), to” and adding in its place “To”;

    b. Removing paragraphs (b);

    c. Removing the text “NOTE TO PARAGRAPHS (a) AND (b)” and adding in its place “Note To Paragraph (a)”;

    d. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and

    e. Removing paragraph (e).

4. § 275.203A-5 is removed and reserved.

5. Amend § 275.204-1 by:

    a. In paragraph (b)(1) removing the phrase “Subject to paragraph (c) of this section, you” and adding in its place “You”;

    b. Removing paragraph (c); and

    c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

6. Amend § 275.204-2 by:

    a. Revision paragraph (a)(7); and

    b. In paragraph (a)(16) by removing the phrase “ to 10 or more persons” and adding in its place “to any person”.

§ 275.204-2 Books and records to be maintained by investment advisers

(a) ***

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement or delivery of funds or securities;

(iii) The placing or execution of any order to purchase or sell any security: *Provided, however:*

(A) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

(B) That if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof; or

(iv) The performance or rate of return of any or all managed accounts or securities recommendations.

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PART 279 – FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 279 continues to read in part as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, et seq.

8. Form ADV [referenced in §279.1] is amended by:

a. In the instructions to the form, revising the section entitled "Form ADV: General Instructions." The revised version of Form ADV: General Instructions is attached as Appendix A;

b. In the instructions to the form, revising the section entitled "Form ADV: Instructions for Part 1A." The revised version of Form ADV: Instructions for Part 1A is attached as Appendix B;

c. In the instructions to the form, revising the section entitled "Form ADV: Glossary of Terms." The revised version of Form ADV: Glossary of Terms is attached as Appendix C;

d. In the form, revising Part 1A. The revised version of Form ADV, Part 1A, is attached as Appendix D.

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

By the Commission.

May 20, 2015

Robert W. Errett
Deputy Secretary