

The proposed amendments to rule 204-2 would require a registered investment adviser to maintain copies of the written policies and procedures drafted under proposed rule 206(4)-7. In addition, the proposed amendments would require a registered investment adviser to retain copies of any records documenting the adviser's annual review of its policies and procedures under proposed rule 206(4)-7. The collection of information under rule 204-2 is necessary for the Commission staff to carry out its examination and oversight program. The adviser would be required to maintain these records for five years.⁹⁵

We estimate that these proposed amendments would increase each registered investment adviser's average annual collection burden under rule 204-2 by 0.5 hours to 211.98 hours,⁹⁶ and would increase the rule's annual aggregate burden by 3,895 hours.⁹⁷ If the proposed amendments to rule 204-2 are adopted, the rule's aggregate annual burden would be 1,651,324.2 hours.⁹⁸

D. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments 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.

Persons wishing to submit comments on the collection of information

⁹⁵ Proposed rule 204-2(a)(17)(i) would require advisers to maintain a copy of any policies and procedures in effect during the past five years. Pursuant to proposed rule 204-2(e)(1), the records documenting the adviser's annual review of those policies and procedures would have to be maintained and preserved in an easily accessible place for five years, the first two in an office of the investment adviser.

⁹⁶ 211.48 hours + 0.5 hours = 211.98 hours.

⁹⁷ 7,790 registered investment advisers × 0.5 hours = 3,895 hours.

⁹⁸ 1,625,638.5 (currently-approved burden) + 21,790.7 (adjustment attributable to increase in number of investment advisers registered with us) + 3,895 (additional burden hours associated with the proposed amendments to rule 204-2) = 1,651,324.2 hours.

requirements 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, Room 3208, New Executive Office Building, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609 with reference to File No. S7-03-03.

OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-03-03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

VII. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed rule 38a-1 under the Investment Company Act, and proposed rule 206(4)-7 and proposed amendments to rule 204-2 under the Advisers Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposals. The IRFA also discusses the reasons for the proposals and the objectives of, and legal basis for, the proposals. Those items are discussed above.

The IRFA discusses the effect of the Proposed Rules on small entities. For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of \$50 million or less as of the end of its most recent fiscal year.⁹⁹ An investment adviser is a small entity if it (i) manages less than \$25 million in assets, (ii) has total assets of less than \$5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages \$25 million or more in assets, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of the most recent fiscal year.¹⁰⁰ The staff

estimates, based on Commission filings, that there are 200 small open- and closed-end investment companies and 29 small business development companies.¹⁰¹ The staff further estimates that there are approximately 7,790 registered investment advisers, of which approximately 172 are small entities.¹⁰²

The IRFA explains that the Proposed Rules would impose no new reporting requirements, but would impose compliance requirements on funds and advisers, including small funds and advisers. A fund would be required to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, obtain approval of the policies and procedures from its board of directors, review the policies and procedures at least annually, and provide a written report on the review to its board of directors. A fund also would be required to designate a chief compliance officer, and to maintain copies of the policies and procedures and reports to the board for at least five years. An adviser would be required to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and review the policies and procedures at least annually. An adviser would be required to designate a chief compliance officer, and to maintain copies of the policies and procedures and any records documenting the annual review for at least five years.

The IRFA states that we have not identified any federal rules that conflict with the Proposed Rules. The IRFA explains that the written policies and procedures that would be required by the Proposed Rules would include some policies and procedures required by other rules under the federal securities laws, but the Proposed Rules would not require them to be duplicated.¹⁰³ The IRFA further explains that some of the records a fund would be required to maintain under the Proposed Rules also may be required records under the general recordkeeping provisions of rule 31a-1 of the Investment Company Act, but that the overlap would be limited

¹⁰¹ These numbers, which are current as of June 2002, are derived from analyzing information from databases such as Morningstar and Lipper. Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

¹⁰² The number of small investment advisers is derived from information submitted by investment advisers registered with us on Form ADV, or amendments thereto, through January 14, 2003.

¹⁰³ See *supra* notes 26, and 29 through 34.

⁹⁹ 17 CFR 270.0-10.

¹⁰⁰ 17 CFR 275.0-7.