

of the new rules, the rule's requirements are essential for the protection of small advisers' clients. Moreover, the existence of a strong compliance program may assist small advisers to attract client assets.

We anticipate that the new rules will indirectly foster capital formation by bolstering investor confidence. It has been our experience that funds and advisers with effective compliance programs are less likely to violate the Federal securities laws and harm to investors is less likely to result. To the extent such an environment enhances investor confidence in funds and client confidence in investment advisers, investors and clients are more likely to make assets available through these intermediaries for investment in the capital markets.

VI. Paperwork Reduction Act

As we discussed in the Proposing Release, the new rules and amendments would impose "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.¹¹¹ These collections of information are mandatory. Two of the collections of information are new. The titles of these new collections are "Rule 38a-1" and "Rule 206(4)-7." The Commission submitted these new collections to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The other collection of information takes the form of amendments to a currently approved collection titled "Rule 204-2," under OMB control number 3235-0278. The Commission also submitted the amendments to this collection to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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 control number.

The collection of information under rule 38a-1 is necessary to ensure that investment companies maintain comprehensive internal programs that promote the companies' compliance with the federal securities laws. This collection of information is mandatory. The respondents are investment companies registered with us and business development companies. Our staff, conducting the Commission's examination and oversight program, will use the information collected to assess funds' compliance programs. Responses provided to the Commission in the context of its examination and

oversight program are generally kept confidential.¹¹² Rule 38a-1 requires that certain records be retained for at least five years.¹¹³

The collection of information under rule 206(4)-7 is necessary to ensure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Advisers Act. This collection of information is mandatory. The respondents are investment advisers registered with us. Our staff, conducting the Commission's examination and oversight program, will use the information collected to assess investment advisers' compliance programs. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.¹¹⁴

The collection of information under rule 204-2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. The respondents are investment advisers registered with us. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.¹¹⁵ The records that an adviser must keep in accordance with the new rules must be retained for at least five years.¹¹⁶

A. Rule 38a-1

We estimated in the Proposing Release that there are approximately 5,030 registered investment companies and 53 business development companies (or a total of approximately 5,083 funds) that will be subject to rule 38a-1.¹¹⁷ We estimated that the average annual hour burden for a fund to document the policies and procedures that make up its compliance program as required by rule 38a-1 would be 60 hours.¹¹⁸ We further estimated that each

fund would spend five hours annually, on average, documenting the conclusions of its annual compliance review for its board of directors as required by rule 38a-1.

We also estimated that each fund would spend 0.5 hours annually, on average, maintaining copies of their compliance policies and procedures and chief compliance officer's annual reports for five years as required by rule 38a-1. In adopting rule 38a-1, we have expanded this recordkeeping requirement to also include copies of briefing materials provided to a fund's board of directors in connection with their approval of the fund and its service providers' compliance programs and board review of the chief compliance officer's annual reports, and to include copies of any records documenting a fund's annual review. Since these changes only require funds to retain copies of a limited number of records they have already created (rather than requiring funds to record any new information), we continue to estimate that the average annual hour burden for each adviser is 0.5 hours.

Most commenters addressing the paperwork burden of rule 38a-1 supported them as reasonable, though one large fund management firm predicted funds would find it burdensome to maintain copies of their compliance policies and procedures for five years as required by the rule. Because of the importance of these copies to our examination and oversight program, we are adopting rule 38a-1 without removing this requirement.

Therefore, our total hour burden estimate for the collections of information under rule 38a-1 remains 332,936.5 burden hours, as we estimated in our proposal.¹¹⁹

B. Rule 206(4)-7

In the Proposing Release, we estimated the total annual average burden hours for advisers to document the policies and procedures that make up their compliance programs, as required by rule 206(4)-7, would be 623,200 hours, based on 7,790 investment advisers registered with us spending an annual average of 80 hours on such documentation.¹²⁰

¹¹⁹ 5,083 funds (5,030 registered investment companies + 53 business development companies) × (60 hours for documenting compliance policies and procedures + 5 hours for documenting conclusions of annual compliance review + 0.5 hours for maintaining records) = 332,936.5 burden hours.

¹²⁰ 7,790 was the number of investment advisers registered with us on our Investment Adviser Registration Depository System as of January 14, 2003. 7,790 registered investment advisers × 80 annual average burden hours = 623,200 hours.

¹¹¹ 44 U.S.C. 3501 to 3520.

¹¹² See section 31(c) of the Investment Company Act (15 U.S.C. 80a-30(c)).

¹¹³ See rule 38a-1(c).

¹¹⁴ See section 210(b) of the Advisers Act (15 U.S.C. 80b-10(b)).

¹¹⁵ *Id.*

¹¹⁶ See rules 204-2(a)(17)(i) and (ii) and rule 204-2(e)(1) (17 CFR 275.204-2(e)(1)).

¹¹⁷ These numbers are based on Commission filings as of January 2003.

¹¹⁸ While each fund would be required to maintain written policies and procedures under rule 38a-1, this average estimate took into account that many fund complexes already have written policies and procedures documenting their compliance programs and can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations to supplement these programs, if necessary. The estimate also took into account that most funds are located within a fund complex, and would be able to draw extensively from the fund complex's "master" compliance program.