SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

Release No. IA-4509; File No. S7-09-15

RIN 3235-AL75

Form ADV and Investment Advisers Act Rules

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the "Commission" or "SEC") is adopting 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 adopting 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: Effective [Insert date 60 days after the date of publication in the Federal Register].

Compliance Date: See Section III of this final rule.

FOR FURTHER INFORMATION CONTACT: Bridget D. Farrell, Senior Counsel, Jennifer Songer, Senior Counsel, Betselot Zeleke, Attorney-Adviser, or Sara Cortes, 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 adopting amendments to rules 202(a)(11)(G)-1 [17 CFR 275.202(a)(11)(G)-1], 203-1 [17 CFR 275.203-1], 204-1 [17 CFR 275.204-1], 204-2 [17 CFR 275.204-2], and 204-3 [17 CFR 275.204-3] 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 rescinding 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.[2] The information collected on Form ADV serves a vital role in our regulatory program and our ability to protect investors. On May 20, 2015,[3] we proposed amendments to Part 1A of Form ADV in three areas: revisions to fill certain data gaps and to provide additional information about investment advisers, including their separately managed account business; amendments to incorporate a method for private fund adviser entities operating a single advisory business to register with us using a single Form ADV; and clarifying, technical and other amendments to existing items and instructions.[4]

Several of the amendments to Form ADV relate to separately managed accounts. These amendments will require advisers to provide certain aggregate information about separately managed accounts that they advise. Other amendments to Form ADV that we are adopting are designed to improve the depth and quality of information that we collect on investment advisers, facilitate our risk monitoring initiatives and assist our staff in its risk-based examination program. Moreover, because Form ADV is available to the

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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] *See Amendments to Form ADV and Investment Advisers Act Rules*, Investment Advisers Act Release No. 4091 (May 20, 2015) [80 FR 33718 (June 12, 2015)] ("Proposing Release").

[4] In general, this Release discusses the Commission's rule and form amendments that will 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 Part 1B of Form ADV as part of their state registrations.

public on our website, these amendments also are intended to provide advisory clients and the public additional information regarding registered investment advisers.

We are also adopting amendments to Part 1A that will provide a more efficient method for the registration on one Form ADV of multiple private fund adviser entities operating a single advisory business ("umbrella registration"). The staff has provided guidance to private fund advisers regarding umbrella registration,[5] and the amendments to incorporate umbrella registration into Form ADV will make the availability of umbrella registration more widely known to advisers. Uniform filing requirements for umbrella registration in Form ADV will provide more consistent data about, and create a clearer picture of, groups of private fund advisers that operate as a single business.

The last set of amendments to Part 1A of Form ADV includes clarifying, technical and other amendments that are based on our staff's experience with the form and responding to inquiries from advisers and their service providers. These amendments should make it easier for advisers to understand and complete the form.

Separate from Form ADV, we are adopting amendments to several Advisers Act rules. First, we are adopting amendments to the books and records rule, rule 204-2, to 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. Advisers also will be required to maintain originals of all written communications received and copies of written communications sent by them related to the performance or rate of return of any

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[5] *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 ("2012 ABA Letter").

or all managed accounts or securities recommendations. As discussed in the Proposing Release, we believe that these amendments will better protect investors from fraudulent performance claims.[6] Finally, we are adopting 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.

We received 50 comment letters on our proposals, most of which were from investment advisers, trade or professional organizations, law firms and consultants.[7] Commenters generally supported the goals of the proposal. The majority of comments focused on reporting of separately managed accounts and umbrella registration. Several commenters supported collection of information on separately managed account clients, but many raised concerns about the public availability of the information and reporting on derivatives and borrowings. A diverse group of commenters supported umbrella registration. Commenters also generally supported the amendments to certain Advisers Act rules. We are adopting the proposed amendments with several modifications to address commenters' concerns. We discuss these modifications and concerns below.

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6 *See* Proposing Release, *supra* footnote 3 at Section I.

7 Comment letters submitted in File No. S7-09-15 are available on the Commission's website at http://www.sec.gov/comments/s7-09-15/s70915.shtml. We also considered those comments submitted in File No. S7-08-15 (*Investment Company Reporting Modernization*, Investment Company Act Release No. 9776 (May 20, 2015) [80 FR 33589 (June 12, 2015)]) that addressed the amendments adopted in this Release. Those comments are available on the Commission's website at http://www.sec.gov/comments/s7-08-15/s70815.shtml. We also 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 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 rulemaking, including data regarding separately managed accounts that was cited and considered as part of the Proposing Release.

II. DISCUSSION

A. Amendments to Form ADV

1. Information Regarding Separately Managed Accounts

Several of the amendments to Form ADV that we are adopting are designed to collect more specific information about advisers' separately managed accounts. 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 registered (including, but not limited to, private funds)) to be separately managed accounts. As we discussed in the Proposing Release, we currently collect detailed information about pooled investment vehicles that advisers manage, but little specific information about separately managed accounts.[8] We believe that collecting additional information about separately managed accounts will enhance our staff's ability to effectively carry out our risk-based examination program and other risk assessment and monitoring activities. We discuss below the specific separate account reporting requirements. Commenters stated that they generally understood our interest in collecting additional data on separately managed accounts,[9] but many raised concerns regarding separately managed account reporting as proposed, and we discuss those concerns below.

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[8] *See* Proposing Release, *supra* footnote 3 at Section II.A.1.

[9] *See, e.g.,* Comment Letter of Blackrock, Inc. (Aug. 11, 2015) ("BlackRock Letter"); Comment Letter of Dechert LLP (Aug. 11, 2015) ("Dechert Letter"); Comment Letter of Investment Adviser Association (Aug. 11, 2015) ("IAA Letter"); Comment Letter of Investment Company Institute (Aug. 11, 2015) ("ICI Letter"); Comment Letter of Invesco Advisers, Inc. (Aug. 11, 2015) ("Invesco Letter"); Comment Letter of LPL Financial LLC (Aug. 11, 2015) ("LPL Letter"); Comment Letter of Managed Funds Association (Aug. 11, 2015) ("MFA Letter"); Comment Letter of Money Management Institute (Aug. 11, 2015) ("MMI Letter"); Comment Letter of Morningstar, Inc. (Aug. 12, 2015) ("Morningstar Letter"); Comment Letter of North American

a. Amendments to Item 5 of Part 1A and Section 5 of Schedule D

Item 5 of Part 1A and Section 5 of Schedule D currently require advisers to provide information about their advisory business including percentages of types of clients and assets managed for those clients. We had proposed to collect information specifically about separately managed accounts, including types of assets held, and the use of derivatives and borrowings in the accounts.[10] We are adopting the amendments to Item 5 of Part 1A and Section 5 of Schedule D largely as proposed, with some modifications in response to comments we received, as discussed below. We are amending Item 5 of Part 1A and Section 5 of Schedule D to require advisers to provide information on an aggregate level regarding separately managed accounts that they manage.[11] Advisers will be required to report information about the types of assets held and the use of derivatives and borrowings in separately managed accounts. Advisers that report that they have regulatory assets under management attributable to separately managed accounts in response to new Item 5.K.(1) of Part 1A will be required to complete new Section 5.K.(1) of Schedule D, and may be required to complete new Sections 5.K.(2) and 5.K.(3) of Schedule D regarding those accounts.

Securities Administrators Association, Inc. (Aug. 11, 2015) ("NASAA Letter"); Comment Letter of National Regulatory Services (Aug. 11, 2015) ("NRS Letter"); Comment Letter of OppenheimerFunds, Inc. (Aug. 10, 2015) ("Oppenheimer Letter"); Comment Letter of Charles Schwab & Co., Inc. (Aug. 11, 2015) ("Schwab & Co. Letter"); Comment Letter of Securities Industry and Financial Markets Association, Asset Management Group and Asset Managers Forum (Aug. 11, 2015) ("SIFMA Letter"); Comment Letter of the Systemic Risk Council (Aug. 7, 2015) ("SRC Letter"); Comment Letter of T. Rowe Price Associates, Inc. (Aug. 11, 2015) ("T. Rowe Price Letter"). However, certain commenters expressed their disapproval of the collection this data. *See* Comment Letter of The Alternative Investment Management Association Limited (Aug. 6, 2015) ("AIMA Letter") (stating that this data should not be collected unless kept confidential).

10 *See* Proposing Release, *supra* footnote 3 at Section II.A.1.

11 *See infra* Section II.A.2.b. for a discussion of other amendments to Item 5 of Part 1A.

b. Section 5.K.(1) of Schedule D

In Section 5.K.(1) of Schedule D advisers will be required to report the approximate percentage of separately managed account regulatory assets under management that are invested in twelve broad asset categories, modified from the ten that were proposed in response to comments received and discussed below. As proposed, advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts will report, on an annual basis, both mid-year and end of year[12] percentages while advisers with less than $10 billion in regulatory assets under management attributable to separately managed accounts will report only end of year percentages. As we stated in the Proposing Release, we believe this information will allow us to better monitor this segment of the investment advisory industry and identify advisers that specialize in particular asset classes.[13] We are adopting the amendments to Section 5.K.(1) of Schedule D largely as proposed, with some minor modifications in response to comments we received, as discussed below.

While some commenters generally supported the collection of this information,[14] others suggested requiring a minimum regulatory assets under management or number of account threshold for reporting on this section to minimize burdens on small and mid-

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12 As stated in Amended Form ADV, Part 1A, Schedule D, Section 5.K.(1), end of year refers to the date used by the adviser to calculate its regulatory assets under management, and mid-year is the date six months before the end of year date.

13 *See* Proposing Release, *supra* footnote 3 at Section II.A.1.

14 *See* Schwab & Co. Letter ("We support the SEC's efforts to collect additional data seeking to minimize as much as possible the burden on regulated entities and the investors they service while helping the SEC to enhance their ability to conduct risk-based examinations of advisers."); BlackRock Letter ("We believe this information will help the Commission identify which managers specialize in SMAs that invest in certain asset classes.").

sized advisers.[15] We recognize that this reporting will impose some burden on all advisers, including smaller advisers, but we believe that gathering this information for all registered advisers is important for us to gain a full understanding of assets held in separately managed accounts managed by investment advisers of different sizes. This section requires advisers, on an annual basis, to report aggregate separate account investments across twelve categories of investments. We believe that requiring all advisers to separately managed accounts to report this information will enable us to gain a more fulsome picture of assets held in separately managed accounts. We have also tailored and limited the scope of information to be reported and the frequency of such reporting.

With respect to the categories of investments listed in Section 5.K.(1), we proposed to require advisers to report the approximate percentage of separately managed account regulatory assets under management invested in ten broad asset categories.[16] Several commenters sought clarification on how to classify assets in certain categories[17] Another commenter suggested new categories, such as "private real estate" and "structured products."[18] In response to that commenter's suggestion[19] we have included a

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15 Comment Letter of Advisor Solutions Group, Inc. (Aug. 11, 2015) ("ASG Letter"); AIMA Letter (suggesting that advisers with a small number of separately managed account clients or a small amount of separately managed account assets under management be exempt from reporting on separately managed accounts).

16 Proposing Release, *supra* footnote 3 at Section II.A.1.

17 LPL Letter; MMI Letter. *See also* Dechert Letter (stating that advisers may not maintain systems that permit them to efficiently categorize assets based on asset types in the proposed amendments); IAA Letter.

18 BlackRock Letter. BlackRock also suggested removing "derivatives" as a category, because derivatives information for some advisers will be collected in Section 5.K.(2). We have not removed "derivatives" as a category, because are collecting different information in Section 5.K.(2) than in Section 5.K.(1).

new category for "Cash and Cash Equivalents."[20] We also believe that additional delineation of equity securities would be helpful for our staff and the public, and accordingly, we have added a "Non-Exchange-Traded Equity Securities" category in addition to the "Exchange-Traded Equity Securities" category, to clarify where to report equities that are not listed on a regulated securities exchange. This information will assist our examination staff in monitoring risks associated with advisers managing separately managed account assets in securities that are not exchange traded.

Some commenters also sought clarification about how to report assets that may be classified into multiple categories.[21] Commenters also suggested that advisers be permitted to use reasonable and documented systems and methodologies for determining appropriate asset categories.[22] We acknowledge that some assets may be classified into more than one category or require advisers to apply discretion about which category applies to a particular asset, and agree that advisers should be permitted to use reasonable methodologies in selecting a category in which to report such an asset, but should not double count assets. Accordingly, in response to these comments, we are adding an

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19 BlackRock Letter; MMI Letter.

20 Amended Form ADV, Part 1A, Schedule D, Section 5.K.(1)(a)-(b). The text proceeding Section 5.K.(1) gives examples of cash and cash equivalents, including bank deposits, certificates of deposit, bankers' acceptances, and similar bank instruments. We also added an instruction to the text preceding Section 5.K.(1)(a) stating that advisers should round to the nearest percent when reporting this information.

21 Comment Letter of Anonymous (Aug. 11, 2015) ("Anonymous Letter") ("derivatives" category may overlap with others); Comment Letter of JAG Capital Management LLC (June 24, 2015) ("JAG Letter") (convertible bonds, TIPS and ETFs); MMI Letter (convertible bonds, fixed income securities, preferred securities); Comment Letter of Professional Compliance Assistance, Inc. (Aug. 11, 2015) ("PCA Letter") (balanced mutual funds). *See also* IAA Letter (U.S. government agency, corporate bonds, other).

22 Dechert Letter; IAA Letter.

instruction to Item 5.K.1 that advisers may use their own internal methodologies and the conventions of their service providers in determining how to categorize assets, so long as their methodologies are consistently applied and consistent with information the advisers report internally and to current and prospective clients, but should not double count assets. We believe that providing this flexibility, which we modeled after an instruction in Form PF, acknowledges that advisers may categorize the same or similar assets differently based on different methodologies.

Some commenters expressed concerns about the proposed reporting of "Corporate Bonds - Investment Grade" and "Corporate Bonds - Non-Investment Grade," based on the proposed definitions of such terms, as they believed that this would require advisers to make subjective decisions about how to classify assets and could result in inconsistent reporting. These commenters requested that the Commission eliminate the reporting requirement, or either provide a more objective definition or permit an adviser to follow and rely on the classifications made by another investment adviser.[23] Another commenter noted the reference to "liquidity" in the definition and requested that the Commission seek a consistent approach to liquidity-related concepts across reporting regimes.[24]

In response to these comments, we are removing the proposed definitions of these terms from Form ADV. Given the instruction we have added permitting advisers to use their own consistently applied methodologies to select asset categories, we believe that the definitions are no longer necessary. We recognize that an adviser might reasonably

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[23] LPL Letter; MMI Letter.

[24] IAA Letter.

categorize the same or similar assets differently from another adviser. Even with such differences, we believe that this categorization will provide useful information, particularly given the Commission's intended purpose for requiring such reporting, which is to better understand how assets in separately managed accounts are invested across that industry, rather than to impose a standard of creditworthiness for such assets.

Other commenters suggested we provide instructions as to whether advisers need to look through investments in funds or ETFs, for example, and report the underlying asset type.[25] With respect to looking through an account's investments in funds, advisers should not do so and we have clarified this in the form.[26] Advisers should not look through investments in funds because we want to understand the extent to which separately managed account assets are invested in funds as well as other types of investments.

c. Section 5.K.(2) of Schedule D

We are also adopting amendments to add Section 5.K.(2) of Schedule D to Form ADV to require advisers to separately managed accounts to report information regarding the use of borrowings and derivatives in those accounts with modifications from the proposal in response to commenters. These amendments are designed to provide data to assist our staff in identifying and monitoring the use of borrowings and derivatives exposures in separately managed accounts as part of the staff's risk assessment and monitoring programs. Some commenters supported our proposal for the collection of

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25 ASG Letter; MMI Letter; NRS Letter; Schwab & Co. Letter.

26 We have added the following sentence to the text preceding Schedule D, Section 5.K.(1)(a): "Investments in derivatives, registered investment companies, business development companies, and pooled investment vehicles should be reported in those categories. Do not report those investments based on related or underlying portfolio assets."

that data.[27] However, as discussed below, several other commenters expressed concern about the proposed reporting thresholds, the public disclosure of certain information,[28] the use of gross notional metrics and the burden associated with reporting this information. The specific gross notional metrics used in Section 5.K.(2) are "gross notional value" and "gross notional exposure," as proposed. The calculation of gross notional exposure includes borrowings and the gross notional value of derivatives. The definition of "gross notional value" specifies how derivatives are measured when determining an account's gross notional exposure.[29]

One commenter suggested requiring reporting on derivatives only if there is a minimum gross notional amount of derivatives.[30] Another commenter suggested as an alternative requiring derivatives reporting only if the adviser uses leverage as part of its investment strategy.[31] We disagree with these approaches as they would give us information only about a segment of the separately managed account industry that uses derivatives or borrowings, and because the line between advisers that use derivatives and borrowings strategically and those that do not can be fluid and difficult to define. While

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27 NASAA Letter; SRC Letter.

28 We discuss public disclosure of separately managed account information in Section II.A.1.e.

29 Gross notional exposure of an account 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 regulatory assets under management of the account." Amended Form ADV, Part 1A, Schedule D, Item 5.K.(2). Gross notional value is defined in the Glossary to Form ADV 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."

30 Anonymous Letter.

31 JAG Letter.

we are adopting Section 5.K.(2) largely as proposed, we have modified it in certain places in response to commenters' concerns, as discussed below.

As proposed, advisers with at least $150 million but less than $10 billion in regulatory assets under management attributable to separately managed accounts would have been required to annually report in Section 5.K.(2)(b) the number of accounts and average borrowings that corresponded to ranges of net asset values and gross notional exposures, as of the date the adviser used to calculate its regulatory assets under management for purposes of the adviser's annual updating amendment. Advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts would have been required to annually report in Section 5.K.(2)(a) the number of accounts, average borrowings, and average derivatives exposures across six categories of derivatives, based on the same ranges of net asset values and gross notional exposures in Section 5.K.(2)(b), as of the date used by the adviser to calculate its regulatory assets under management for purposes of its annual updating amendment, and six months before that date.

We received a diversity of views about whether the proposed reporting thresholds of at least $150 million in regulatory assets under management attributable to separately managed accounts, and at least $10 billion in regulatory assets under management attributable to separately managed accounts for additional reporting, were appropriate, and if not, what these thresholds should be.[32] Certain commenters suggested thresholds

[32] ASG agreed with the $150 million threshold. Oppenheimer agreed with the thresholds, but also suggested a threshold based on number of accounts, below which the adviser would not be required to respond to Section 5.K.(2), and permitting advisers to round number of accounts to the nearest five in a particular range. IAA recommended increasing the $150 million threshold to $500 million but supported the $10 billion threshold. SIFMA also agreed with the thresholds, but

based on number of accounts or the size of individual separately managed accounts. However, we believe establishing thresholds based on regulatory assets under management attributable to separately managed accounts better provides us with comparability across advisers and appropriately advances our regulatory goal of gaining a more complete understanding of advisers' separately managed account business as compared to the alternatives suggested by commenters. Several commenters recommended that we increase the $150 million threshold to $500 million on the basis that such a change would allow the Commission to collect 95% of the data that it would using the $150 million threshold, while relieving approximately 3,000 advisers from having to report derivatives and borrowings information.[33] On balance, and based on our staff's experience with small advisers, we agree with commenters that this is a sensible accommodation that would allow us to meet our regulatory objectives while alleviating reporting burdens on smaller advisers. As a result, we have raised the minimum

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suggested changing the account-level reporting thresholds to minimize confidentiality concerns and permitting advisers to round to the nearest 5 accounts in a particular range. AIMA noted that the proposed thresholds at the adviser level and at the individual separately managed account level are low for advisers with institutional clients and recommended not requiring advisers with less than $150 million in separately managed account assets to report any separately managed account information, including in Sections 5.K.(1) and 5.K.(3). Anonymous suggested that the reporting threshold should be based on a minimum gross notional amount in relation to the adviser's total regulatory assets under management. BlackRock suggested that reporting thresholds should not be tied to aggregate adviser separately managed account regulatory assets under management, but rather only to individual separately managed account regulatory assets under management.

[33] IAA Letter; Comment Letter of the New York State Bar Association, Business Law Section, Securities Regulation Committee, Private Investment Funds Subcommittee (Aug. 12, 2015) ("NYSBA Committee Letter"); PCA Letter; Schwab & Co. Letter. IAA estimated that if the minimum threshold were $150 million, the Commission would collect data on approximately $37.8 trillion in separately managed account assets under management from 7,257 advisers. However, it estimated that if the threshold were raised to $500 million, the Commission would collect data on approximately $36.8 trillion in separately managed account assets under management from approximately 3,700 advisers. A recent analysis of Form ADV by Commission staff filings shows that over 2,800 advisers will be relieved from the filing requirement and we will receive information on 98% of the assets for which we would have received reporting under the proposed $150 million threshold. IARD system data as of May 16, 2016.

reporting threshold to $500 million. Advisers with at least $500 million but less than $10 billion in separately managed account regulatory assets under management will be required to report on Section 5.K.(2)(b) the amount of separately managed account regulatory assets under management and the dollar amount (rather than the proposed average amount) of borrowings attributable to those assets that correspond to three levels of gross notional exposures rather than four levels as proposed. Advisers with at least $10 billion in separately managed account regulatory assets under management will be required to report on Section 5.K.(2)(a) the information required in Section 5.K.(2)(b) as well as the derivative exposures across the same six derivatives categories that were proposed. Also as proposed, advisers may limit their reporting for both (a) and (b) to individual accounts of at least $10 million.[34]

Another change we are making to Section 5.K.(2) in response to commenters is to base the reporting of borrowings and derivatives on regulatory assets under management in separately managed accounts, rather than net asset value as proposed. One commenter noted that advisers do not currently characterize their individual client accounts according to net asset values.[35] We agree, and accordingly advisers will be required to report both the amount of regulatory assets under management and borrowings in their separately managed accounts that correspond to ranges of gross notional exposure of those accounts. Regulatory assets under management is already used throughout Form

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[34] Some commenters suggested making the exclusion of individual accounts under $10 million optional because excluding those accounts might, in some cases, be more costly to firms. *See* Dechert Letter; IAA Letter; NYSBA Committee Letter. We have revised the text in Section 5.K.(2) to read, "You may, but are not required to, complete the table with respect to any separately managed account with regulatory assets under management of less than $10,000,000."

[35] IAA Letter.

ADV, and should be available to advisers for purposes of Section 5.K.(2). Similarly, the reporting of borrowings in Section 5.K.(2) has been revised to require information about the total dollar amount of borrowings that correspond to different ranges of gross notional exposure, and not the weighted average amount (which is based on a percentage of net asset value).[36] We believe these changes will reduce burdens for advisers completing this section, while providing our staff with additional information regarding borrowings and derivatives exposures in separately managed accounts.

Commenters presented a range of concerns and suggestions about the use of gross notional metrics in reporting on Section 5.K.(2). Some commenters supported the use of gross notional metrics for assessing the use of derivatives and borrowings in separately managed accounts,[37] while others raised issues concerning the utility of gross notional metrics.[38] Several commenters stated that gross notional metrics are not accurate measures of leverage or risk and argued that they provide little value without context, and they could be misleading or misunderstood.[39] Some commenters suggested

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36 One commenter suggested that reporting of borrowing is duplicative of reporting of margin by broker-dealer custodians to FINRA. JAG Letter. While we recognize that broker-dealers report this information, we note that parties other than broker-dealers may serve as custodians to separately managed accounts.

37 Comment Letter of CFA Institute (Aug. 10, 2015) ("CFA Letter") (observing that notional exposure metrics are valuable in conducting investment and operational analyses, but provide less value for risk management); NASAA Letter (stating that the proposal contemplates collecting commonly used metrics on the use of derivatives and borrowings, consistent with Form PF); and SRC Letter (suggesting that the collection of data relating to gross notional exposure, borrowings and gross notional value of derivatives would provide the Commission with "invaluable insight into the use of derivatives and borrowings by advisers in separately managed accounts.").

38 *See, e.g.* NYSBA Committee Letter (stating that publicly reporting gross notional exposures without also reflecting actual exposure on the form would be misleading and potentially alarming to investors) and MFA Letter (asserting that gross notional disclosures provide an inaccurate representation of economic or market exposures and would not provide meaningful information, and thus should not be required).

39 BlackRock Letter; Dechert Letter; IAA Letter; Invesco Letter.

reporting derivatives and borrowings in Form ADV similar to how leverage is reported in Form PF or in the AIFMD framework.[40] For example, one commenter suggested reporting long and short dollar amounts, similar to Form PF.[41] We acknowledge these commenters' concerns and recognize that gross notional metrics may not always reflect the way in which derivatives are used in a separately managed account and are not a risk measure.[42] We also recognize that there are other measures or additional data points that could be used to evaluate the use of derivatives in a separately managed account, which may depend on various considerations, such as investment strategy, types of investments, and the specific risks that are being considered. The calculations of gross notional exposure and gross notional value that we proposed and are adopting today rely on measures common to all advisers: regulatory assets under management of an account; total amount of borrowings in an account; and the notional value of derivatives. As we noted in the Proposing Release, gross notional metrics are commonly used metrics and are comparable to the information collected on Form PF regarding private funds. On balance, therefore, we continue to believe that, for most types of derivatives the gross notional metrics generally provide a measure that is sufficient for this regulatory purpose,

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40 Dechert Letter (suggesting allowing additional data points, such as the ones required in Form PF, to better provide the Commission a more comprehensive understanding of the extent to which derivatives are used in separately managed accounts and the relevant risks associated with them); Blackrock Letter (providing an appendix containing a comprehensive framework for calculating leverage, similar to AIFMD's commitment leverage approach, under which derivatives used for hedging positions and offsetting long and short positions do not create leverage).

41 AIMA Letter.

42 For example, different derivatives transactions having the same notional amount but different underlying reference assets—for example, an interest rate swap and a credit default swap having the same notional amount—may expose a separately managed account to very different potential investment risks and potential payment obligations.

which is to collect information about the scale of an account's derivatives activities, rather than to collect specific risk metrics or more granular information regarding the ways in which derivatives are used in a separate account. Section 5.K.(2) also provides advisers the option of including a narrative description of the strategies and/or manner in which borrowings and derivatives are used in the management of separately managed accounts. To the extent that advisers are concerned that disclosure of gross notional metrics would be misleading, they could provide in the space provided in Section 5.K.(2) an additional narrative description regarding their use of derivatives in these accounts.

Many commenters requested that the term "derivatives" be defined as part of this rulemaking.[43] Several of these commenters suggested the Commission adopt a definition that provides flexibility to adapt to changing financial markets and instruments, such as the characteristic-based definition of derivatives in FASB ASC 815.[44] Another commenter, however, suggested that we should not define derivatives, similar to Form PF.[45] We believe that Form ADV, which collects aggregate portfolio information, is similar to Form PF. Thus, consistent with adviser reporting on Form PF and the proposal, we have decided not to define the term at this time. Several commenters requested clarification on whether interest rate derivatives should be presented in terms of 10-year bond equivalents, consistent with Form PF.[46] We have added a sentence to the definition of "interest rate derivative" in the Glossary that interest rate derivative

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43 ASG Letter; Oppenheimer Letter; PCA Letter; SIFMA Letter; T. Rowe Price Letter.

44 Oppenheimer Letter; SIFMA Letter; T. Rowe Price Letter.

45 IAA Letter.

46 AIMA Letter; IAA Letter; MFA Letter.

information should be presented in terms of 10-year bond equivalents. Regarding the term "equity derivative," one commenter requested confirmation that the term "listed" as used in Form ADV has the same meaning as in Form PF. We confirm that the term "listed equity derivatives" refers to exposures to derivatives for which the underlying asset is listed equities.[47]

Finally, we are also revising the proposal in ways that should both alleviate concerns about confidentiality, which we discuss more fully below, and simplify reporting of separately managed account information. First, we reduced the number of categories of gross notional exposure that we proposed in the charts. As proposed, Section 5.K.(2) included four categories of gross notional exposure by which accounts and borrowings were reported. This has been reduced to three categories of gross notional exposure: less than 10%, 10 - 149% and 150% or more. In addition to reducing the number of categories from four to three, we changed the highest threshold from 200% or more to 150% or more. After consideration of comments received regarding the potential burdens of providing this information, we believe that the use of three categories instead of four and changing the highest threshold from 200% or more to 150% or more will reduce the reporting burden on advisers while providing us with sufficient information regarding the use of derivatives and borrowings by investment advisers in separately managed accounts. In addition, we believe that these modifications provide less granular information than proposed, thereby mitigating some concerns commenters raised regarding confidentiality. We also modified Section 5.K.(2) to

[47] We note that current staff guidance regarding this term in Form PF takes a similar approach. *See* Form PF, Frequently Asked Questions, Question 26.1.

remove reporting of the number of separately managed accounts. As proposed, Section 5.K.(2) would have required advisers to report the number of accounts that corresponded to the accounts' net asset value and gross notional exposure. Section 5.K.(2) (a) and (b) now require reporting of regulatory assets under management based on ranges of gross notional exposure of accounts.[48]

d. Section 5.K.(3) of Schedule D

As proposed, we are amending Form ADV 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 of the adviser's regulatory assets under management attributable to separately managed accounts held at the custodian.[49] This information will allow our examination staff to identify advisers whose clients use the same custodian in the event, for example, a concern is raised about a particular custodian. As we discussed in the Proposing Release, similar disclosures are required for custodians to pooled investment vehicles[50] and registered investment companies.[51]

We received several comments on this aspect of the proposal. For example, a commenter suggested that we obtain this information from other parties, including custodians.[52] However, we do not directly regulate all separately managed account

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48 Amended Form ADV, Part 1A, Schedule D, Section 5.K.(2).

49 Amended Form ADV, Part 1A, Schedule D, Section 5.K.(3). We added "aggregate" before "separately managed account regulatory assets under management" to the text preceding the section for clarity.

50 Amended Form ADV, Part 1A, Schedule D, Section 7.B.(1), Question 25.

51 Form N-1A, Item 19(h)(3).

52 BlackRock Letter. *See also* Comment Letter of Financial Engines Advisors, LLC (Aug. 11, 2015) ("Financial Engines Letter") (suggesting identification of recordkeeper, rather than custodian, where advised assets are associated with a 401(k) plan).

custodians and we believe this information is available to advisers because advisers interact with custodians when placing trades on behalf of separately managed account clients. Some commenters agreed with the ten percent of regulatory assets under management threshold for reporting custodians of the adviser's separately managed account client assets.[53] Other commenters recommended that the Commission modify the threshold, and raised concerns about this reporting for smaller advisers.[54] We agree with the commenters who believe that the ten percent threshold is appropriate. We recognize that this reporting will impose some burdens on all advisers, including smaller advisers. However, we are adopting the ten percent threshold as proposed because we continue to believe it, rather than a higher threshold, most appropriately advances our regulatory goal of identifying and obtaining a more complete picture regarding the custodians serving a significant proportion of an adviser's separately managed account clients. Moreover, we believe we have appropriately tailored and limited the scope of information to be reported since this requirement at most will require advisers to identify ten custodians.

In addition, some commenters recommended deleting or clarifying the requirement to identify the location of the custodian's office.[55] These commenters reasoned that because of the electronic nature of custodian records, and the current advisers' practice of not maintaining this physical location information as a matter of

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53 Anonymous Letter; CFA Letter; PCA Letter.

54 AIMA Letter (suggested a twenty percent threshold); BlackRock Letter; IAA Letter; MMI Letter; NRS Letter (suggested a minimum separately managed account regulatory assets under management threshold in lieu of or in addition to the ten percent threshold).

55 ASG Letter; IAA Letter; MMI Letter; Oppenheimer Letter; PCA Letter; SIFMA Letter.

course, disclosure of the identity of the custodian, rather than the location of the office, would be of primary benefit to the Commission. This information is consistent with similar questions we ask about custodians in Schedule D, Section 7.B.(1), Question 25 of Form ADV. Location information allows us to identify the appropriate contacts when a custodian is part of a large organization with multiple offices.[56] Therefore, we are adopting these requirements as proposed.

e. Public Disclosure of Separately Managed Account Information

While commenters understood our reasons for collecting information on separately managed accounts, many expressed concerns that the new reporting would lead to disclosure of client-identifying information or confidential or proprietary information about investment strategy.[57] Commenters also expressed concern that public disclosure of separately managed account information could put advisers with a small number of separately managed account clients at a competitive disadvantage if clients

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[56] One commenter also sought clarification about reporting custodians who have multiple legal entities. IAA Letter. Advisers do not have to determine affiliations of related custodians for purposes of this item, but rather should report the particular legal entity that is custodian for the adviser's separately managed account assets.

[57] Comment Letter of the American Bar Association, Section of Business Law, Federal Regulation of Securities Committee (Sept. 3, 2015) ("ABA Committee Letter"); AIMA Letter; Anonymous Letter; ASG Letter; BlackRock Letter; Dechert Letter; IAA Letter; Invesco Letter; MFA Letter; NYSBA Committee Letter; Oppenheimer Letter; Comment Letter of Schulte Roth & Zabel LLP (Aug. 11, 2015) ("Schulte Letter"); Comment Letter of Shearman & Sterling LLP (Aug. 11, 2015) ("Shearman Letter"); SIFMA Letter; Comment Letter of Securities Industry and Financial Markets Association Asset Management Group and Asset Managers Forum (Jan. 13, 2016) ("SIFMA II Letter"). *See also* Comment Letter of Private Equity Growth Capital Council (Aug. 11, 2015) ("PEGCC Letter").

were concerned about the reporting on Form ADV being linked or attributable to their separately managed accounts.[58] We address these concerns below.

Section 210(a) of the Advisers Act requires information in Form ADV to be publicly disclosed, unless we find that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.[59] As discussed in the Proposing Release, we believe these amendments will enhance our staff's risk assessment and monitoring activities, which also serve to benefit investors.[60] We also believe that aggregate information about separately managed accounts may assist the public in better understanding advisers' management of separately managed account clients.[61] This information may directly improve the ability of clients and potential clients of investment advisers to make more informed decisions about the selection and retention of investment advisers, which, in turn, may also benefit the public by increasing competition among investment advisers for clients. For these reasons, we continue to believe that public disclosure of information about separately managed accounts on Form ADV is appropriate in the public interest as well as for the protection of investors. We have,

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58 ABA Committee Letter; AIMA Letter; Anonymous Letter; BlackRock Letter; Dechert Letter; IAA Letter; MFA Letter; NYSBA Committee Letter; Oppenheimer Letter; Schulte Letter; Shearman Letter; SIFMA Letter; SIFMA II Letter.

59 Advisers Act section 210(a). Certain commenters suggested that this information be filed in a nonpublic manner, similar to Form PF. *See* ABA Committee Letter; PEGCC Letter. We note that Form PF is filed on a confidential basis under Advisers Act section 204(b), which prohibits the Commission from disclosing Form PF information unless those disclosures are made to Congress, other Federal agencies, or courts under certain conditions. Advisers Act section 204(b)(8).

60 Proposing Release, *supra* footnote 3 at Section II.A.1.

61 *C.f.*, NASAA Letter ("These amendments would provide additional necessary information to the SEC and state regulators, as well as members of the public, far outweighing any regulatory burden the proposal creates.").

however, made several modifications to our proposal, discussed below, in response to commenters.

Some commenters also expressed broader concerns that public disclosure of separately managed account holdings or borrowings and derivatives information would reveal proprietary investment strategies.[62] We do not believe that public disclosure of aggregate information in Schedule D, Sections 5.K.(1) or (2) would lead to the revelation of proprietary investment strategies. This information would be reported for one or two data points per year,[63] depending on the amount of regulatory assets under management attributable to separately managed accounts, ninety days after the end of the adviser's fiscal year,[64] and only on an aggregate basis for all the separately managed account clients that an adviser manages. Given the limited number of data points that advisers to separately managed accounts must report on, the fact that the information is reported both in aggregate and in broad categories across an adviser's separately managed accounts, and the time lag between those data points and any public reporting, we disagree that this

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62 *See, e.g.*, ABA Committee Letter ("While individual types of securities would not be disclosed, the percentage of the portfolio in ten different asset categories would be subject to unprecedented public scrutiny, as would be detailed breakdowns of derivatives exposures and borrowings."); BlackRock Letter; Dechert Letter; MFA Letter.

63 Amended Form ADV, Part 1A, Schedule D, Sections 5.K.(1) and (2). Although two commenters recommended against larger advisers providing both mid-year and end of year separately managed account information, we believe this information is important to understanding advisers to the largest separately managed accounts. LPL Letter; NRS Letter.

64 Advisers are required to update the derivatives and borrowings information annually, when filing their annual updating amendment to Form ADV, which is consistent with the requirement for updating other information in Item 5 of Form ADV. Advisers with at least $10 billion in separately managed account regulatory assets under management would be required to report both mid-year and end of year information as part of their annual filing. Many commenters supported the annual reporting and recommended against more frequent reporting. Anonymous Letter; ASG Letter; CFA Letter; Comment Letter of Capital Research and Management Company (Aug. 11, 2015) ("Capital Research Letter"); MMI Letter; Morningstar Letter; NRS Letter; PCA Letter; Shearman Letter. Form ADV is required to be amended at least annually, within 90 days of the end of the adviser's fiscal year. *See* rule 204-1.

reporting could compromise trading strategies. In addition, as discussed above, we reduced the number of categories of gross notional exposures in Section 5.K.(2), which means advisers will be required to report less granular information.[65]

We are mindful of commenters' concerns regarding disclosure of client-specific information and related competition concerns.[66] Accordingly, we revised Item 5.D., which lists the number of advisory clients in categories, to include a "fewer than 5 clients" column.[67] We also have modified Section 5.K.(2) to remove reporting of the number of accounts. As proposed, Section 5.K.(2) would have required reporting of the number of accounts that correspond to the accounts' net asset value and gross notional exposure. As adopted, Section 5.K.(2)(a) and (b) will require reporting solely by ranges of gross notional exposure of accounts.[68] We believe that these changes mitigate the risk of any client-specific information being disclosed in Item 5.D. and Sections 5.K.(1) and (2).

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65 *Supra* Section II.A.1.c.

66 *See, e.g.*, ABA Committee Letter; AIMA Letter; BlackRock Letter ("For a particular adviser, there may be only one or two accounts in a particular category, potentially making this client identifiable and its RAUM with an adviser public information."); Dechert Letter; IAA Letter; MFA Letter ("[A] fund manager may need to report data of a single SMA client, which is not suitable for public disclosure."); NYSBA Committee Letter ("In addition, if an adviser has a small number of accounts, the disclosure of any of the information would be particularly problematic as others may be in a position to determine the identity of the clients in any such account."); Oppenheimer Letter; SIFMA Letter.

67 Several commenters suggested limiting reporting for five or fewer clients, or rounding to the nearest five clients. IAA Letter; NYSBA Committee Letter; Oppenheimer Letter; SIFMA Letter. Other commenters suggested that advisers with a small number of separately managed account clients be excluded from reporting on separately managed accounts. *See, e.g.*, AIMA Letter; SIFMA Letter. However, a small number of accounts could still include a large amount of assets or significant use of borrowings and derivatives. For that reason, reporting will be required on these accounts. We believe that the modifications in Item 5.D. and Schedule D, Section 5.K.(2) will address confidentiality concerns related to those accounts.

68 Amended Form ADV, Part 1A, Schedule D, Section 5.K.(2).

f. Additional Comments About Reporting of Separately Managed Accounts

Additional comments regarding separately managed account reporting in Schedule D included comments about the definition of separately managed account, the treatment of subadvisers, and the reporting requirements when both the registered investment adviser and the separately managed account owner are not United States persons.

First, several commenters sought clarification of the definition of the term "separately managed account" as used in Form ADV.[69] We do not believe that a formal definition of this term is required because we have included instructions in the text preceding Sections 5.K.(1) and (2) to clarify that any regulatory assets under management reported in Item 5.D.(3)(d) (investment companies), (e) (business development companies), and (f) (other pooled investment vehicles) should not be reported in Schedule D, Sections 5.K.(1) or (2). Thus, regulatory assets under management reported for those types of clients in Item 5.D.(3) should not be considered separately managed account assets and should not be reported in Sections 5.K.(1) or (2).

Second, several commenters requested clarification about how to treat subadviser relationships in reporting separately managed account information, including suggestions that only advisers with discretionary authority report information in these sections.[70] In

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69 *See, e.g.*, IAA Letter (noting the term has not been defined in the Advisers Act); Financial Engines Letter (seeking the exclusion of assets within defined contribution plans from separately managed accounts); MMI Letter (seeking clarification for sponsors, overlay managers, portfolio managers and model providers). Commenters also sought clarification of the treatment of pooled investment vehicles that are not private funds. *See* PEGCC Letter. *See also* IAA Letter. Pooled investment vehicles include, but are not limited to, private funds.

70 Comment Letter of JG Advisory Services LLC (Jul. 22, 2015) ("JGAS Letter"); LPL Letter; MMI Letter; NYSBA Committee Letter; SIFMA Letter. *See also* Dechert Letter; IAA Letter.

response to these concerns, we are clarifying the instructions in the text preceding Section 5.K.(1)(a) to expressly state, as they already do for Section 5.K.(2), that a subadviser to a separately managed account should provide information only about the portion of the account that it subadvises.[71] We recognize that these instructions may require both advisers and subadvisers to report on the same regulatory assets under management (*i.e.*, the assets that they both manage in an account) in Sections 5.K.(1) and (2) of their separate Form ADVs, which is consistent with the current reporting structure of regulatory assets under management in Form ADV.

Further, in response to suggestions that only advisers with discretionary authority should be required to report information in Sections 5.K.(1) and (2), we note that these sections both require responses based on the regulatory assets under management an adviser reports in Item 5.F. Per the instructions to Item 5.F., advisers are already required to consider the role of discretionary authority when calculating regulatory assets under management. Those instructions require that the calculation include only assets over which advisers provide continuous and regular supervisory or management service.[72] The instructions further state that an adviser "provide[s] continuous and regular supervisory or management services with respect to an account" if: (a) the adviser has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or (b) the adviser does not have discretionary authority over the account, but has ongoing responsibility to select or make recommendations, based

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71 Amended Form ADV, Part 1A, Schedule D, Sections 5.K.(1) and (2).

72 *See* Form ADV, Instructions to Part 1A, Item 5.F.

upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, the adviser is responsible for arranging or effecting the purchase or sale.[73] Thus, if an adviser does not provide continuous and regular supervisory or management services with respect to an account, those account's assets should not be reported as regulatory assets under management in Item 5.F, and would not be reported in Sections 5.K.(1) and (2).

A final suggestion from commenters was to exclude from the reporting requirements any separately managed account held by a non-United States person and managed by an investment adviser whose principal office and place of business is outside the United States.[74] As proposed, and consistent with the reporting of regulatory assets under management generally, we are requiring each adviser whose principal office and place of business is outside the United States to report information regarding separately managed accounts for all of their clients, including clients who are not United States persons.[75] We believe that the consistent reporting of information in Item 5 will be valuable in our and the public's understanding of the new separately managed account items as they are a subset of the regulatory assets under management already being reported by registered investment advisers.

Commenters suggested that we not require reporting of accounts beneficially owned by those who are not United States persons and managed by advisers whose

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73 *Id.*

74 AIMA Letter; PEGCC Letter; Shearman Letter. "United States person" is defined in the Glossary to Form ADV.

75 The Form ADV Instructions to Part 1A, Item 5 that specify how regulatory assets under management must be calculated provides that accounts of clients who are not United States persons are accounts that must be included in the adviser's securities portfolios.

principal offices and places of business are outside the United States. These commenters noted Item 7.B. of Form ADV and Form PF generally allow advisers whose principal offices and places of business are outside the United States to exclude reporting on funds that are not United States persons, are not offered in the United States, and are not beneficially owned by any United States persons.[76] As noted above, there is not a similar exclusion in Item 5 regarding funds that are not United States persons advised by any advisers, and advisers must include those clients in response to Item 5, including their regulatory assets under management and client types. An exception like the one suggested by commenters would hamper the utility of the data collection in Item 5, which collects aggregate, census-type information regarding the adviser's total business. We are collecting this information to better inform Commission staff and the public about this segment of the investment adviser industry.[77]

In the Proposing Release, we requested comment on whether to require advisers to report on securities lending and repurchase agreements in separately managed accounts.[78] While some commenters supported collection of this information,[79] others noted that advisers may not be aware of or directly involved in securities lending activity in separately managed accounts,[80] and several commenters objected to the disclosure.[81]

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76 AIMA Letter; PEGCC Letter; Shearman Letter.

77 *See infra* Section II.A.3 for a discussion of the application of the Advisers Act to non-U.S. advisers.

78 Proposing Release, *supra* footnote 3 at Section II.A.1.

79 CFA Letter; SRC Letter.

80 JAG Letter; NRS Letter; Comment Letter of The Risk Management Association, Committee on Securities Lending (Aug. 10, 2015) ("RMA Committee Letter"); Comment Letter of State Street Corporation (Aug. 11, 2015) ("State Street Letter").

In response to the comments we received, we are not requiring disclosure regarding securities lending or repurchase agreements at this time.

2. Additional Information Regarding Investment Advisers

In addition to the amendments outlined above regarding separately managed accounts, we are adopting, largely as proposed, several new questions and amending existing questions on Form ADV regarding identifying information, an adviser's advisory business, and affiliations. As discussed in the Proposing Release, these items were developed through our staff's experience in examining and monitoring investment advisers, and are designed to enhance our understanding and oversight of investment advisers and to assist our staff in its risk-based examination program.

a. Additional Identifying Information

We are adopting several amendments to Item 1 of Part 1A of Form ADV as proposed to improve certain identifying information that we obtain about advisers. 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.[82] We are removing this question from Item 1.N. and adding a question to Item 1.D. that requires an adviser to provide all of its CIK Numbers if it has one or more such numbers assigned,[83] regardless of public reporting

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81 MFA Letter: PCA Letter. *See also* ASG Letter.

82 Form ADV, Part 1A, Item 1.N.

83 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 certain other capacities, such as a transfer agent.

company status.[84] As we explained in the Proposing Release, requiring registrants to provide all of their assigned CIK Numbers, if any, will improve our staff's ability to use and coordinate Form ADV information with information from other sources.[85] The commenter who weighed in on the reporting of CIK Numbers did not object to this amendment, which we are adopting as proposed.

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 addresses of each website. We are amending Item 1.I. largely as proposed to also ask whether the adviser has one or more accounts on social media platforms, such as Twitter, Facebook or LinkedIn, and requesting the address of each of the adviser's social media pages in addition to the address of each of the adviser's websites in Section 1.I. of Schedule D.[86] As discussed in the Proposing Release, our staff may 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 to identify and monitor new platforms. Current and prospective clients may use this information to learn more about advisers and make more informed decisions regarding the selection of advisers.[87]

Several commenters were generally supportive of our proposed approach to social media reporting,[88] but some commenters were concerned that it would be too

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84 Amended Form ADV, Part 1A, Item 1.D.(3).

85 Proposing Release, *supra* footnote 3 at Section II.A.2.

86 Amended Form ADV, Part 1A, Item 1.I. and Section 1.I. of Schedule D.

87 Proposing Release, *supra* footnote 3 at Section II.A.2.

88 CFA Letter; IAA Letter; LPL Letter; Morningstar Letter; NASAA Letter. *See also* BlackRock Letter (understood our rationale for requesting this information).

burdensome for advisers and not useful to investors.[89] Several commenters requested clarification on the types of social media platforms that trigger the reporting requirement,[90] and some commenters recommended that we limit required reporting to accounts on social media platforms where the adviser controls the content.[91] These commenters pointed out that there may be social media platforms that reference an adviser over which the adviser has no control and of which the adviser may not even be aware.[92] We agree, and we have revised Item 1.I. of Part 1A and Section 1.I. of Schedule D to note that the required reporting is limited to accounts on social media platforms where the adviser controls the content.[93] Commenters generally agreed with the proposal's approach of not requiring information about the social media accounts of an adviser's employees.[94]

A commenter requested that we limit required reporting to accounts on public-facing social media platforms used to promote the adviser's business.[95] We did not intend to require reporting on information posted on an adviser's internal social media platform or information not intended to promote the adviser's business to potential clients

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89 Comment Letter of TMorgan Advisers, LLC (June 28, 2015) ("Morgan Letter"); NRS Letter; NYSBA Committee Letter; Oppenheimer Letter.

90 ASG Letter; IAA Letter; MMI Letter; SIFMA Letter.

91 ASG Letter; MMI Letter; SIFMA Letter.

92 MMI Letter. *See also* ASG Letter.

93 An adviser may control its social media content, notwithstanding the fact that a social media platform has a policy to edit or remove content (such as offensive content) across the platform.

94 ASG Letter; MFA Letter; MMI Letter; Morgan Letter; Morningstar Letter; NRS Letter; NYSBA Committee Letter.

95 IAA Letter.

(*e.g.*, information posted on a job board intended to attract job applicants). We have revised the text preceding Item 1.I. of Part 1A and Section 1.I. of Schedule D to clarify that the required reporting is limited to accounts on publicly available social media platforms.

Another commenter requested that we limit required reporting to accounts on social media platforms that promote the adviser's business in the United States or are targeted towards the adviser's U.S. clients.[96] The commenter pointed out that there are circumstances in which an adviser might have additional accounts on social media platforms that are not used to promote the adviser's business in the United States or are targeted towards the adviser's non-U.S. clients and that reporting on such accounts would provide little value to the Commission and could be confusing to clients or potential clients seeking information about an adviser.[97] We believe that, to the extent an account on a social media platform is used to promote the business of an adviser registered with the Commission, the account should be disclosed in order to better inform our staff about the adviser's use of social media. However, if an account on a social media platform is used solely to promote the business of an affiliate or affiliates that are not advisers registered with the Commission, the account does not need to be disclosed on Form ADV.

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96 SIFMA Letter.

97 *Id.* The commenter also mentioned that a large advisory complex that includes multiple affiliated advisers may maintain an account on a social media platform on behalf of a parent company or another affiliate that is not designed to promote the reporting adviser's services and/or is targeted towards non-U.S. clients, perhaps in a language other than English.

A few commenters were concerned that the burden on advisers of updating social media information on Form ADV promptly if the information becomes inaccurate in any way would be great, given the frequency of changes in social media platforms and accounts.[98] We believe that, by limiting the social media information required on Form ADV to an adviser's accounts on publicly available social media platforms where the adviser controls the content, the burden associated with reporting and updating that information should be limited. Because the social media environment is rapidly evolving, we think it will be useful to the Commission and investors to have current information on an adviser's use of social media on Form ADV. Additionally, this approach to updating social media reporting is consistent with our current approach to updating the other information required in Item 1 of Part 1A, including information on advisers' websites.

Several commenters questioned the utility for investors of social media reporting in Part 1A of Form ADV.[99] Commenters stated that investors who are interested in an adviser's social media presence will most likely look to the adviser's website or conduct an internet search to find the adviser's accounts on various social media platforms.[100] We recognize that this is most likely the case. However, we believe that having current information on an adviser's social media presence collected in one place on Form ADV may be helpful to investors. Two commenters stated that investors generally do not read

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98 BlackRock Letter; Oppenheimer Letter; SIFMA Letter.

99 Comment Letter of the Association for Corporate Growth (Aug. 11, 2015) ("ACG Letter"); ASG Letter; JAG Letter; Morningstar Letter; PCA Letter.

100 ASG Letter; JAG Letter; Morningstar Letter; Oppenheimer Letter; PCA Letter.

Part 1A of Form ADV and recommended that we consider including social media reporting in Part 2A of Form ADV instead.[101] We recognize that investors may not look to Form ADV for information on an adviser's social media presence, but if they do, they will likely look to Item 1.I. of Part 1A and Section 1.I. of Schedule D because those are where we currently collect identifying information about an adviser, including information on an adviser's website or websites. In addition, a primary purpose of this item is to provide the Commission and our staff with information that may be used in our examination program and for other regulatory purposes. Accordingly, we believe it will be useful to the Commission to have information on an adviser's use of social media on Form ADV, and this placement in the form is an efficient and readily identifiable location for such information that appropriately serves our regulatory purposes.

We are amending Item 1.F. of Part 1A of Form ADV and Section 1.F. of Schedule D largely as proposed 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 from more than one location, about its largest five offices in terms of number of employees.[102] In order to help Commission examination staff learn more about an investment adviser's business and identify locations to conduct examinations, we are now requiring that advisers provide us with the total number of offices at which they conduct investment advisory business and

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101 Morningstar Letter; PCA Letter. *See also* Comment Letter of Jeff J. Diercks (May 22, 2015) ("Diercks Letter").

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

provide information in Schedule D about their 25 largest offices in terms of number of employees.[103] As discussed in the Proposing Release, we chose 25 offices as the number to be reported because it will 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.[104]

In addition to providing contact information for the 25 largest offices in terms of number of employees, we are amending Section 1.F. of Schedule D as proposed to require advisers to report each office's CRD branch number (if applicable) and the number of employees who perform 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 will 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. This information also will assist our staff in assessing offices that conduct a combination of activities.

Two commenters provided general support for our proposed enhanced reporting of adviser offices.[105] However, several commenters expressed concern that our approach would impose a significant burden on advisers with little or no benefit to either the

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

104 *See* Proposing Release, *supra* footnote 3 at Section II.A.2. IAPD Investment Adviser Registered Representative State Data as of May 2, 2016 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.

105 LPL Letter; NASAA Letter.

Commission or investors.[106] Another commenter noted the substantial burden on advisers required to report additional offices, but acknowledged that burden would ease after the initial reporting period.[107] We recognize that the burden on some large advisers might be significant, especially in the initial reporting cycle when they are required to report their additional offices for the first time. However, we believe that the burden will decrease after the initial filing because in subsequent filings, advisers will only be reporting changes to their previously reported additional office information. Two commenters requested clarification on how often the additional office information should be updated.[108] One commenter felt that annual updating of office locations would not be unduly burdensome but more frequent than annual updates would be burdensome.[109] We agree and are requiring that Section 1.F. of Schedule D be updated as part of an adviser's annual updating amendment and not more frequently.[110]

One commenter expressed concern about our proposal's impact on smaller advisers and suggested that, as an alternative, we require advisers to (a) continue to provide information about their five largest additional offices, (b) report their total number of additional offices, and (c) report additional information only for their additional offices that meet a certain threshold of regulatory assets under management or

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106 ACG Letter; CFA Letter; Morningstar Letter; NRS Letter; NYSBA Committee Letter.

107 Morningstar Letter.

108 ASG Letter; Morningstar Letter.

109 ASG Letter.

110 Amended Form ADV, General Instruction 4.

that engage in certain enumerated practices of interest to the Commission.[111] We currently require advisers to track their additional offices based upon number of employees.[112] We understand that many advisers do not currently track their additional offices based upon the amount of regulatory assets under management attributable to each office and we believe that requiring them to do so would place an additional burden on advisers. For this reason, we are not changing our approach to additional office reporting.

One commenter requested that we simplify the reporting of information about additional offices for firms that are dually registered as investment advisers with the Commission and as broker-dealers with FINRA by allowing them to cross-reference to information submitted on their Uniform Branch Office Registration Form filed with FINRA.[113] We agree and we are updating the IAPD system so that by entering a branch's CRD number, the address, phone number, and facsimile number of all additional offices will automatically populate on Section 1.F. of Schedule D.

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 proposed amending 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 to the adviser, and if so, to report the name and IRS Employer Identification Number (if any) of that other person. We are

111 NRS Letter.

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

113 MMI Letter.

adopting the amendments to Item 1.J. largely as proposed, but in addition to related persons of the adviser, as discussed below, advisers will not be required to disclose the identity of the other person compensating or employing the chief compliance officer if that other person is an investment company registered under the Investment Company Act of 1940 advised by the adviser.[114]

As discussed in the Proposing Release, our examination staff has observed a wide spectrum of both quality and effectiveness of outsourced chief compliance officers and firms.[115] Identifying information for these third-party service providers, like others on Form ADV,[116] will allow us to identify all advisers relying on a particular service provider and could be used to improve our ability to assess potential risks.

Two commenters expressed general support for our proposal to identify if chief compliance officers are compensated or employed by other parties for providing chief compliance officer services,[117] and others expressed concern that the requirement would be unduly burdensome on advisers or that the information would be of little or no use to the Commission or investors.[118] We are not persuaded that this requirement would be

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114 Amended Form ADV, Part 1A, Item 1.J.

115 Proposing Release, *supra* footnote 3 at Section II.A.2.

116 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.

117 CFA Letter; NASAA Letter.

118 ACG Letter; Comment Letter of L.A. Schnase (Jul. 2, 2015) ("Schnase Letter") (would be duplicative of already reported information, raises privacy concerns with the chief compliance officer's other clients, would become inaccurate or out-of-date quickly, and would miss the situation of firms hiring comprehensive external compliance support with an in-house chief compliance officer in name only). *See also* NRS Letter (adviser may not have access to this information).

unduly burdensome because the adviser should have or be able to easily obtain the necessary information, and we continue to believe that this information will be valuable for the reasons discussed above.

One commenter felt that our inquiry should focus not on the chief compliance officer's other employment and/or compensation, but rather on the details of the compliance program and resources committed to address compliance risk (*e.g.*, the chief compliance officer's education and professional designations, the number of other compliance employees, the estimated total hours spent on compliance, and the other duties of the chief compliance officer).[119] We agree with the commenter's suggestion that evaluating the overall effectiveness of an adviser's compliance program relies heavily on the facts and circumstances specific to that adviser.[120] However, we are adopting the amendments to Item 1.J. largely as proposed, because we believe that they meet our regulatory objective of identifying all advisers relying on particular service providers and may improve our ability to assess potential risks related to outsourced chief compliance officers and firms.

One commenter expressed concern that identifying outsourced chief compliance officers would invite additional scrutiny about an adviser's judgment in hiring externally versus internally.[121] While we understand the commenter's concerns, we continue to believe that identifying information for these third-party service providers, like others on

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119 Morgan Letter.

120 *Id.*

121 Shearman Letter.

Form ADV, will allow us to identify all advisers relying on a particular service provider and to address potential risks associated with that service provider.

Two commenters agreed with our proposal to specifically exclude situations where the chief compliance officer is paid or employed by a related person of the adviser.[122] Two other commenters recommended that we specify that a related person includes a registered investment company advised by the adviser.[123] These commenters noted that in many instances an individual may serve as the chief compliance officer of both an adviser and a registered investment company advised by the adviser and receive compensation from both the adviser and the registered investment company.[124] These commenters stated that requiring advisers to disclose these arrangements does not further our objective of assessing the use of third party service providers.[125] We agree and we have updated Item 1.J.(2) to exclude chief compliance officers compensated or employed by an investment company registered under the Investment Company Act of 1940 advised by the adviser.

In the Proposing Release, we asked whether we should require information about an adviser's use of third-party compliance auditors. Two commenters supported such disclosure,[126] but several commenters felt the disclosure would either not be useful or lead to incorrect inferences about the decision to use, or not use, external compliance

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122 MMI Letter; Morningstar Letter.

123 Dechert Letter; IAA Letter.

124 *Id*.

125 *Id*.

126 Comment Letter of Brown & Associates LLC (Aug. 10, 2015) ("Brown Letter"); NASAA Letter.

support.[127] Several commenters expressed concern that, due to the diversity of services provided by third-party compliance auditors, requiring an adviser to state whether or not it uses them would not be useful to the Commission from a risk monitoring perspective.[128] Commenters also expressed concern that requiring an adviser to report on its use of third-party compliance auditors could lead to incorrect inferences about the adviser's compliance program. For example, advisers hiring third-party compliance auditors might be viewed as signaling a compliance issue, whereas advisers not hiring them might be viewed as not sufficiently focused on compliance.[129] Two commenters expressed concern about confidentiality issues implicated by third-party compliance auditor reporting.[130] We are not requiring advisers to report information on Form ADV regarding third-party compliance auditors at this time.

We are amending Item 1.O. as proposed to require advisers with assets of $1 billion or more to report their assets within three ranges: (1) $1 billion to less than $10 billion; (2) $10 billion to less than $50 billion; and (3) $50 billion or more.[131] We added Item 1.O. in 2011 in connection with the Dodd-Frank Act's[132] requirements concerning

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127 ASG Letter; IAA Letter; MFA Letter; MMI Letter; NRS Letter; NYSBA Committee Letter; PEGCC Letter.

128 IAA Letter; MFA Letter; NRS Letter; PEGCC Letter. *See also* ASG Letter (requested that we more clearly define "auditor"); JGAS Letter; MMI Letter.

129 IAA Letter; NYSBA Committee Letter; PEGCC Letter.

130 Anonymous Letter; MMI Letter (these relationships are often confidential, such as where law firms are involved).

131 Amended Form ADV, Part 1A, Item 1.O.

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

certain incentive-based compensation arrangements.[133] Advisers are currently required to check a box to indicate if they have assets of $1 billion or more. Requiring advisers to report their assets within one of the three specified ranges will provide more precise data for use in Commission rulemaking arising from ongoing Dodd-Frank Act implementation.[134]

Two commenters expressed general support for our proposal to require advisers to report their own assets within specified ranges.[135] Two commenters did not believe that the information would be useful.[136] However, we continue to believe that requiring advisers to report their assets as described above will provide more accurate data for use in Commission rulemaking arising from ongoing Dodd-Frank Act implementation. Another commenter felt our proposal raised privacy issues for investors in an adviser where the adviser is privately held.[137] While we are sensitive to privacy concerns, we believe that we have narrowly tailored our proposal to address these concerns. We are only requiring that advisers with significant assets (at least $1 billion) report them and

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133 *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (Jul. 19, 2011)] ("Implementing Release") at Section II.C.6; section 956 of the Dodd-Frank Act. We are also moving 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.

134 *See, e.g.,* section 165(i) of the Dodd-Frank Act (requires the Commission and other financial regulators to establish methodologies for the conduct of stress tests by financial companies with consolidated assets of over $10 billion).; *Incentive-based Compensation Arrangements*, Exchange Act Release No. 34-77776 (May 6, 2016) (identifies three categories of covered institutions based on average total consolidated assets, ranging from $1 billion to $250 billion) (re-proposal of Exchange Act Release No. 34-64140); *Incentive-Based Compensation Arrangements,* Exchange Act Release No. 34-64140 (Mar. 29, 2011) [76 FR 21170 (Apr. 14, 2011)].

135 CFA Letter; PCA Letter.

136 NRS Letter; NYSBA Committee Letter.

137 Anonymous Letter.

even then only within one of the three specified ranges. One commenter asked for clarification on the timing of the calculation of assets.[138] The item, as proposed and adopted today, specifies that an adviser should use the total assets shown on the adviser's balance sheet for the most recent fiscal year end.[139] We did not receive comments on the specific asset ranges.

b. Additional Information About Advisory Business

In addition to the amendments to Item 5 regarding separately managed accounts discussed above, we are adopting a number of other amendments to Item 5. Item 5 currently requires an adviser to provide approximate ranges for three 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.[140] As proposed, we are amending these items to require an adviser to report the number of clients[141] 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.[142] As we discussed in the Proposing Release, replacing ranges with more

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138 PEGCC Letter.

139 Amended Form ADV, Part 1A, Item 1.O.

140 Form ADV, Part 1A, Item 5.C.(1), Item 5.D.(1)-(2).

141 Amended Form ADV, Part 1A, Item 5.D.(1)-(2). Advisers with fewer than five clients in a particular category (other than investment companies, business development companies and other pooled investment vehicles) may check Item 5.D.(2) indicating that fact rather than report the actual number of clients in the particular category in Item 5.D.(1).

142 Amended Form ADV, Part 1A, Item 5.D.(3). The categories of clients are the same as those in Item 5.D. of the current Form ADV, except that we are 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.

precise information will provide more accurate information about investment advisers and will significantly enhance our ability to analyze data across investment advisers because providing actual numbers of clients and regulatory assets under management will allow us to see the scale and concentration of assets by client type.[143] 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 by client type should be readily available to advisers because 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 are adding to Item 5 as proposed a requirement for advisers to report the number of clients for whom they provided advisory services but do not have regulatory assets under management in order to obtain a more complete understanding of each adviser's advisory business.[144] As we explained in the Proposing Release, this information will assist in our risk assessment process and increase the effectiveness of our examinations.[145]

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143 Proposing Release, *supra* footnote 3 at Section II.A.2.

144 Amended 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.

145 Proposing Release, *supra* footnote 3 at Section II.A.2.

Some commenters were generally supportive of our proposal to replace ranges with more precise information.[146] Several commenters stated that advisers would need to update computer systems to obtain this data, and raised concerns about the increased burden that our proposal would place on advisers.[147] One commenter felt that removing an adviser's ability to rely on estimates of the amount of regulatory assets under management would increase the time required to prepare Item 5.D.[148] We are not convinced that the burden placed on advisers by the requirement to report precise information will be significant. We continue to believe that the required information should be readily available to advisers because 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.

Some commenters suggested that our proposal to replace ranges with more precise information would heighten the risk of inaccurate reporting on Form ADV.[149] Commenters suggested that instead of requiring more precise information, we require advisers to report only an approximate number of clients and regulatory assets under management so as not to penalize advisers for "minor or inadvertent inaccuracies"[150] and

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146 NRS Letter; PCA Letter; CFA Letter (generally supportive but questions the usefulness of actual numbers rather than ranges); NASAA Letter (supports reporting the number of clients for whom an adviser provides advisory services but does not have regulatory assets under management).

147 ASG Letter; MMI Letter. *See* LPL Letter.

148 ASG Letter.

149 ASG Letter; LPL Letter; MMI Letter.

150 LPL Letter. *See also* IAA Letter.

one commenter suggested using narrower ranges.[151] Our goal in collecting more precise information is not to penalize advisers for minor inaccuracies but to enhance our ability to analyze data across investment advisers and allow us to see the scale and concentration of assets by client type. We collect numerical data throughout Form ADV, and we believe that advisers have access to the information required to accurately complete Item 5.

One commenter expressed skepticism that the amendments would provide new, meaningful information to investors.[152] However, we believe that investors potentially will benefit from having a more complete understanding of an investment adviser's business. In addition, we believe that investors will indirectly benefit from our enhanced ability to analyze data across investment advisers, including the scale and concentration of assets by client type.

One commenter expressed concern that the reporting of precise numbers might reveal confidential client relationships or the amount of regulatory assets under management attributable to specific clients.[153] We are sensitive to these privacy concerns, and, as noted above, we are revising Form ADV, Part 1A, Item 5.D. to allow advisers with fewer than five clients in a particular category (other than investment companies, business development companies and other pooled investment vehicles) to

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151 MMI Letter.

152 ACG Letter.

153 Anonymous Letter.

check Item 5.D.(2) indicating that fact rather than report the actual number of clients in the particular category in Item 5.D.(1).[154]

Several commenters requested clarification in situations where a client fits into more than one client category.[155] Specifically, two commenters requested that the Commission clarify whether an adviser that has contracts with other advisers to sub-advise registered investment companies, business development companies or pooled investment vehicles should categorize those clients as either (1) "other investment advisers" because other investment advisers hold the contracts, or as (2) "investment companies," "business development companies," or "pooled investment vehicles," as applicable, because those entities hold the regulatory assets under management.[156] We are updating the instructions to Item 5.D. to state that, to the extent that the adviser advises a registered investment company, business development company, or pooled investment vehicle, the adviser should report those sub-advised assets in categories (d), (e), or (f) as applicable.[157] We also are amending the instructions in the text preceding Item 5.D., in response to a comment that we received,[158] to state that if a client fits into more than one category, then the adviser should select the category that most accurately represents the client in order to avoid double counting clients and assets.[159]

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154 Amended Form ADV, Part 1A, Item 5.D.(1)-(2).

155 Anonymous Letter; ASG Letter; IAA Letter; SIFMA Letter.

156 ASG Letter; IAA Letter.

157 Amended Form ADV, Part 1A, Item 5.D.

158 SIFMA Letter.

159 Amended Form ADV, Part 1A, Item 5.D.

Some commenters requested more specific definitions for the categories of clients.[160] However, most of the categories have not changed from current Form ADV and, based upon our experience with Form ADV, we believe that they are sufficiently clear. At the suggestion of two commenters,[161] we are moving the category labeled "Corporations or other businesses not listed above" down in the table so that it appears just above the category labeled "Other."[162]

We are adopting, largely as proposed, 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 reports in Part 1A of Form ADV is now required to check a box noting that election.[163] As discussed in the Proposing Release, this information will allow our examination staff to review across advisers the extent to which advisers report assets under management in Part 2A that

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160 IAA Letter (Commission should clarify whether a "sovereign wealth fund and foreign official institution" includes the account of any government or quasi-government entity). Morningstar Letter (Commission should add definitions for categories, including "other," and provide a list of common custodian account types and how they map to the client categories).

161 IAA Letter; SIFMA Letter.

162 Amended Form ADV, Part 1A, Item 5.D.

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

differ from the regulatory assets under management reported in Part 1A of Form ADV.[164] Having this information will 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.

One commenter asserted that this information would not be meaningful to investors.[165] Another commenter noted that advisers may report additional assets in Part 2A of Form ADV, rather than calculate regulatory assets under management differently than they do in Part 1A of Form ADV.[166] We continue to believe that Item 5.J.(2) will provide the staff with helpful information regarding these calculations.

In addition, largely as proposed, we are adding a question asking the approximate amount of an adviser's total regulatory assets under management that is attributable to clients that are non-United States persons[167] to complement the current requirement that each adviser report the percentage of its clients that are non-United States persons, which, based on our experience, is not always a reliable indicator of an adviser's relationships with non-U.S. clients.[168] As noted in the Proposing Release, our examination staff can use this information to better understand the extent of investment advice provided to non-

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164 Proposing Release, *supra* footnote 3 at Section II.A.2.

165 ACG Letter.

166 PCA Letter (stating that when advisers report different client assets in Part 2A than regulatory assets under management in Part 1A of Form ADV, it is frequently due to additional assets being included in the Part 2A calculation, such as non-discretionary assets that are under "advisement," rather than a different method of calculating assets under management).

167 Amended Form ADV, Part 1A, Item 5.F.(3).

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

U.S. clients which will assist in our risk assessment process.[169] In our proposal, we used the term "non-U.S. client" and commenters sought clarification of the definition of "non-U.S. client."[170] In response, the amendments that we are adopting today use the term "non-United States person" in Item 5.F.(3). 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.

Section 5.G.(3) of Schedule D currently requires advisers to report the SEC File Number for registered investment companies and business development companies that they advise. Largely as proposed, we are 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 series thereof) or business development company that they advise.[171] As described in the Proposing Release, this information will permit our staff to assess the accounts and consider how an adviser manages conflicts of interest between parallel managed accounts and registered investment companies or business development companies advised by the adviser.[172] This

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169 Proposing Release, *supra* footnote 3 at Section II.A.2.

170 Oppenheimer Letter; SIFMA Letter.

171 Amended Form ADV, Part 1A, Section 5.G.(3) of Schedule D. The Glossary to Amended Form ADV includes "parallel managed account," which is defined as: "With respect to any registered investment company or series thereof 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 series thereof or business development company that you advise."

172 Proposing Release, *supra* footnote 3 at Section II.A.2.

information also will show the extent of any shift in assets between parallel managed accounts and registered investment companies or business development companies.

Some commenters questioned the usefulness of collecting information on parallel managed accounts[173] or thought that disclosures about parallel managed accounts would not produce meaningful results or could be misleading.[174] We recognize that there may be different reasons for assets to shift between parallel managed accounts and registered investment companies or business development companies, but that does not make the additional information less useful to the staff in considering how advisers manage conflicts of interest and assessing the extent of any shift in assets for risk monitoring purposes.

Some commenters noted that registered investment companies often have multiple series, each with its own portfolio manager, investment strategy, and holdings; and that the concept of a parallel managed account could only be applied in the registered investment company context on a series-by-series basis.[175] In response, we have updated

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173 BlackRock Letter (suggesting that asking during examinations for an adviser's policies related to fair treatment of all accounts, and testing of compliance with those policies, would better achieve the objective); IAA Letter; Comment Letter of Small Business Investor Alliance (Aug. 11, 2015) ("SBIA Letter") (opining that the proposal adds unnecessary reporting for advisers of business development companies and is duplicative of Form N-2). We believe the information to be collected in Section 5.G.(3) is different from the information collected on Form N-2 regarding closed-end funds and business development companies because the information collected on Form N-2 regarding management of other accounts focuses on individual portfolio managers, while the information collected on Form ADV is reported at the adviser level.

174 Anonymous Letter (stating there are many reasons assets could shift between parallel managed accounts and registered investment companies or business development companies); BlackRock Letter.

175 IAA Letter; Oppenheimer Letter; SIFMA Letter.

Section 5.G.(3) to clarify that parallel managed accounts related to a registered investment company (or a series thereof) should be reported.

One commenter felt that advisers would have difficulty interpreting the requirement that a parallel managed account pursue "substantially the same investment objective and strategy" as the relevant investment company or business development company.[176] Advisers should use their best judgment and make a good faith determination as to whether the investment objectives and strategies in question are "substantially the same." We note that many private fund advisers already make this determination when filling out Form PF.[177]

One commenter asked for confirmation that the value of derivatives held in a parallel managed account should be calculated using the market value of the derivatives rather than the gross notional value, if that is how the value of the account is reported to the account holder.[178] We agree that market value should be used in such a case.[179]

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176 PCA Letter.

177 The definition of "parallel managed account," *supra* footnote 171, is consistent with the Form PF definition of "parallel managed account." Form PF, Glossary of Terms.

178 IAA Letter.

179 This approach is consistent with the staff's view on how the value of a parallel managed account should be calculated on Form PF. *See* Form PF, Frequently Asked Questions. The staff's response to Question 11 on reporting value states that "When calculating the value of a parallel managed account for purposes of either determining whether it is a dependent parallel managed account that is aggregated with the reporting fund or reporting its value in Question 11, you should use the market value of the derivatives held in the parallel managed account, instead of the gross notional value, if that is how the value of the account is reported to the account holder."

Finally, we are amending Item 5, largely as proposed, to obtain additional information concerning wrap fee programs.[180] 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 are amending Item 5.I. to ask whether the adviser participates in a wrap fee program, and if so, the total amount of regulatory assets under management attributable to acting as a sponsor to or portfolio manager for a wrap fee program.[181] One commenter noted that many advisers act as both the sponsor of and a portfolio manager for the same wrap fee program and that this could cause those advisers to double count their regulatory assets under management attributable to wrap fee programs in Item 5.I.[182] We agree and have added a question to Item 5.I. that asks for the total amount of regulatory assets under management attributable to the adviser acting as both sponsor to and portfolio manager for the same wrap fee program. To prevent advisers from double-counting assets, we added an instruction that assets reported in this new category should not be reported elsewhere in Item 5.I.(2).

Section 5.I.(2) of Schedule D currently requires an adviser to list the name and sponsor of each wrap fee program for which the adviser serves as portfolio manager. We are amending Section 5.I.(2), as proposed, to add questions that require an adviser to provide any SEC File Number and CRD Number for sponsors to those wrap fee

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180 The Glossary to Form ADV 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 amending this definition.

181 Amended Form ADV, Part 1A, Item 5.I.

182 MMI Letter.

programs.[183] As discussed in the Proposing Release, this information will 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.[184]

One commenter was generally supportive of our proposed reporting on wrap fee programs, but questioned its usefulness to investors and market participants.[185] As discussed above, our enhanced wrap fee reporting is designed to assist our staff in its risk assessment and examination process. Three commenters requested further clarification regarding the existing definition of a wrap fee program.[186] We are not changing or clarifying the existing definition of a "wrap fee program" that is included in Form ADV because, based on our experience with the Form, we believe it has been sufficiently clear.

c. 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

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

184 Proposing Release, *supra* footnote 3 at Section II.A.2.

185 CFA Letter.

186 ASG Letter (asking whether an adviser will be deemed to participate in a wrap fee program if the adviser negotiates an asset-based fee with a broker and pays that fee rather than having the client pay that fee); PCA Letter (asking whether an adviser will be deemed to "participate" in a wrap fee program as a result of placing client funds (or recommending that clients place non-discretionary funds) in one or more programs sponsored by unaffiliated third parties, but in which the adviser does not serve as the sponsor or a portfolio manager). *See also* NRS Letter (suggesting that we require wrap fee program sponsors to report the combined regulatory assets under management for themselves and any independent portfolio managers in their program).

private funds managed by the adviser. We are adopting as proposed amendments to Sections 7.A. and 7.B.(1) of Schedule D that require an adviser to provide identifying numbers (*i.e.*, Public Company Accounting Oversight Board ("PCAOB")-assigned numbers[187] and CIK Numbers[188]) in response to two questions to allow us to better compare information across data sets and understand the relationships of advisers to other financial service providers.

Two commenters were concerned that, by requiring an adviser to report the PCAOB-assigned number of its auditing firm (if applicable), we are suggesting that using a PCAOB-registered auditing firm is required by the Commission.[189] This is not our intent. An auditing firm performing a surprise examination is not required to be registered with the PCAOB unless the adviser or its related person is serving as qualified custodian.[190]

In addition, we are adding a question to Section 7.B.(1) of Schedule D to require an adviser to a private fund that qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940 (a "3(c)(1) fund") to report whether it limits sales of the fund to qualified clients, as defined in rule 205-3 under the Advisers Act.[191] As proposed, the question would have required

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187 Amended Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(e).

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

189 Shearman Letter. *See* Comment Letter of American Institute of Certified Public Accountants, Financial Reporting Executive Committee (Aug. 17, 2015) ("AICPA Letter").

190 Rules 206(4)-2(a)(4) and 206(4)-2(a)(6)(i).

191 Amended Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 15(b). Current Question 15 will become Question 15(a).

an adviser to report, for every private fund that it advises (including any private fund that qualifies for the exclusion from the definition of "investment company" under section 3(c)(7) of the Investment Company Act of 1940 ("3(c)(7) fund"), the approximate percentage of the private fund beneficially owned (in the aggregate) by qualified clients.[192] One commenter supported the rationale for our proposal;[193] however other commenters questioned the value of the question and were concerned about situations where the qualified client status of an investor is not known, or does not need to be determined.[194] We continue to believe that this information will give us a better sense of the financial sophistication and nature of investors in private funds, but in response to comments, we are making two changes from our proposal.

First, we are limiting the question to 3(c)(1) funds because each investor in a 3(c)(7) fund is required to meet the higher "qualified purchaser" standard.[195] Second, we are revising the question to require a simple yes or no response as to whether the adviser limits sales of a fund to qualified clients instead of requiring advisers to report the percentage of ownership of the fund by qualified clients. Commenters noted that many advisers that are not registered with the Commission (*e.g.*, exempt reporting advisers[196])

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

193 CFA Letter.

194 ACG Letter; Anonymous Letter; SBIA Letter.

195 "Qualified purchaser" is defined in Section 2(a)(51) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)).

196 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.

are not required to determine whether the fund's investors are qualified clients.[197] These advisers may simply respond "No" to the revised question. Other commenters asked us to clarify whether advisers must re-certify the qualified client status of their investors annually.[198] As long as an investor met the definition of a "qualified client" when it entered into the advisory contract with the adviser, then the investor is considered a "qualified client" even if it no longer meets the dollar amount thresholds of the rule. This is consistent with our existing approach to the definition of qualified client.[199]

3. Umbrella Registration

We are adopting, as proposed, amendments to Form ADV that codify umbrella registration for certain advisers to private funds. We are adopting the amendments today because we believe that umbrella registration should be made available to those private fund advisers that are registered with us and operate a single advisory business through multiple legal entities. Umbrella registration is not mandatory, but we believe it will simplify the registration process for these advisers, and provide additional and more consistent data about, and create a clearer picture of, groups of private fund advisers that operate a single advisory business through multiple legal entities. The amendments also will allow for greater comparability across private fund advisers.

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197 ACG Letter; SBIA Letter. *See also* Anonymous Letter. Section 205(a) of the Advisers Act only applies to advisers who are registered or required to be registered with the Commission and generally restricts advisers from entering into, extending, renewing, or performing any advisory contract that provides for performance-based compensation. Rule 205-3 permits advisers to charge performance-based compensation to "qualified clients," as defined in the rule. Advisers who are registered or required to be registered with the Commission are otherwise prohibited from charging performance-based compensation.

198 JGAS Letter; SBIA Letter. *See also* PCA Letter.

199 *See Investment Adviser Performance Compensation*, Investment Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358 (Feb. 22, 2012)].

As we discussed in the Proposing Release, the Dodd-Frank Act repealed the private adviser exemption that used to be in section 203(b)(3) of the Advisers Act.[200] As a result, many previously unregistered advisers to private funds,[201] including hedge funds and private equity funds, were required to register under the Advisers Act. Today, about 4,469 registered investment advisers provide advice on approximately $10.5 trillion in assets to approximately 30,896 private funds clients.[202]

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,[203] Form ADV was designed to accommodate the registration request of an adviser structured as a single legal entity. As a result, private fund advisers that operated as a single advisory business but were organized as separate legal entities may have had to file multiple registration forms, even though the registration effectively was for the same

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200 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.

201 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."

202 Based on IARD system data as of May 16, 2016.

203 We 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 (Jul. 6, 2011)] ("Exemptions Release"). *See also In the Matter of TL Ventures Inc.*, Investment Advisers Act Release No. 3859 (June 20, 2014) (settled action).

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.[204] The guidance provided conditions under which the staff believed one adviser (the "filing adviser") could file a single Form ADV on behalf of itself and other advisers that were controlled by or under common control with the filing adviser (each, a "relying adviser"), provided that they conducted a single advisory business (collectively an "umbrella registration").

We believe that most advisers that can rely on umbrella registration are doing so, with approximately 743 filing advisers and approximately 2,587 relying advisers filing umbrella registrations.[205] However, the method outlined in the staff guidance for filing an umbrella registration was limited by the fact that the form was designed for a single legal entity. This created confusion for filers and the public. It also complicated our

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204 *See* 2012 ABA Letter, *supra* footnote 5. 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), *available at* http://www.sec.gov/divisions/investment/noaction/aba120805.htm ("2005 ABA Letter") at Question G1.

205 Based on IARD system data as of May 16, 2016.

staff's data collection and analysis on umbrella registrants.[206] Today's amendments are designed to ameliorate these issues.

We are adopting, as proposed, amendments to Form ADV's General Instructions that establish conditions for an adviser to assess whether umbrella registration is available. The conditions we are adopting today are the same as the conditions set forth 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 Release).[207] The conditions are as follows:

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;
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

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206 Under the guidance provided by the staff, for example, umbrella registration was appropriate where a relying adviser was not prohibited from registering with the Commission by section 203A of the Advisers Act. *See* 2012 ABA Letter, *supra* footnote 5. However, a relying adviser did not have a way to answer Item 2 regarding the basis on which it was eligible for SEC registration. In addition, relying advisers often had to list owners and executive officers in a confusing manner in Schedules A and B which were not designed to accommodate multiple advisers and did not always provide the Commission staff with useful information on the owners of each relying adviser. Also, the filing adviser disclosed its reliance on the 2012 ABA Letter in the Miscellaneous Section of Schedule D.

207 *See* 2012 ABA Letter, *supra* footnote 5 at Question 4.

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;[208]

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.[209]

The conditions are designed to limit eligibility for umbrella registration to groups of private fund advisers that operate as a single advisory business. For purposes of umbrella registration, we consider the following factors as indicia of a single advisory business: commonality of advisory services and clients; a consistent application of the Advisers Act and the rules thereunder to all advisers in the business; and a unified

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208 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.

209 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.

compliance program. The conditions that we are adopting today are designed to demonstrate these factors. Condition 1 limits eligibility for umbrella registration to private fund advisers with a commonality of advisory services and clients. Conditions 2 and 4 are designed to 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 provide assurance that the filing and relying advisers are subject to a unified compliance program. Based on our experience, we believe that the conditions, when taken together, are a strong indication of the existence of a single private fund advisory business operating through the use of multiple legal entities.

In addition, we are amending the General Instructions as proposed 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.[210] To satisfy the requirements of Form ADV while using umbrella registration, the filing adviser is 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 in any other reports or filings it must make under the Advisers Act or the rules thereunder (*e.g.*, Form PF). The revisions to the form's Instructions and Form ADV further specify those questions that should be answered solely with respect to the filing adviser and those that require the filing adviser

[210] *See* Form ADV, General Instruction 5.

to answer on behalf of itself and its relying adviser(s).[211] Additionally, we are amending the Glossary as proposed to add the following three terms: (i) "filing adviser;"[212] (ii) "relying adviser;"[213] and (iii) "umbrella registration."[214]

We also are adopting as proposed a new schedule to Part 1A – Schedule R – that must be filed for each relying adviser.[215] Schedule R requires identifying information, basis for SEC registration, and ownership information about each relying adviser, some of which was already filed by an adviser relying on the staff guidance.[216] This new schedule consolidates in one location information for each relying adviser and addresses 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 that Form ADV was not designed to

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

212 "Filing Adviser" means: "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* Form ADV, Glossary.

213 "Relying Adviser" means: "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* Form ADV, Glossary.

214 "Umbrella Registration" means: "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* Form ADV, Glossary.

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

216 Schedule R requires 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 did not include categories that would make the relying adviser ineligible for umbrella registration, such as serving as an adviser to a registered investment company.

accommodate umbrella registration.[217] We believe that certain information that we are requiring (such as mailing address and basis for registration) is the same for nearly all relying advisers, and the filing adviser can check a box indicating that the mailing address of the relying advisers is the same as that of the filing adviser. Finally, we are adding, as proposed, a new question to Schedule D that requires advisers to identify the filing advisers and relying advisers that manage or sponsor private funds reported on Form ADV.[218] This information will allow us to identify the specific adviser managing the private fund reported on Form ADV if it is part of an umbrella registration. We believe that this information will help us better understand the management of private funds, will provide information to contact relying advisers, and will help us better understand the relationship between relying advisers and filing advisers.

We received multiple comment letters regarding our proposal to codify umbrella registration, the vast majority of which expressed support for umbrella registration.[219] Several commenters also agreed that umbrella registration should not be mandatory.[220] However, several commenters urged the Commission to expand the eligibility for umbrella registration to additional advisers including non-U.S. filing advisers, exempt

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217 Under the staff's guidance in the 2012 ABA Letter, an adviser reported in its Form ADV (Miscellaneous Section of Schedule D) that it and its relying advisers were together filing a single Form ADV in reliance on the position expressed in the letter and identified each relying adviser by completing a separate Section 1.B., Schedule D, of Form ADV for each relying adviser and identified it as such by including the notation "(relying adviser)." *See* 2012 ABA Letter, *supra* footnote 5 at Question 4.

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

219 *See, e.g.*, ABA Committee Letter; ACG Letter; AIMA Letter; ASG Letter; BlackRock Letter; CFA Letter; Dechert Letter; MFA Letter; NASAA Letter; NRS Letter; NYSBA Committee Letter; PCA Letter; PEGCC Letter; SBIA Letter; Schulte Letter; Shearman Letter; SIFMA Letter.

220 ABA Committee Letter; ASG Letter; BlackRock Letter; Dechert Letter.

reporting advisers, advisers to other types of clients, and advisers not independently eligible to register with the Commission.[221]

Many commenters encouraged us to permit umbrella registration for non-U.S. filing advisers.[222] However, as we previously have expressed, we remain concerned that, absent Condition 2 (which requires that the filing adviser have its principal place of business in the United States), a group of related advisers based inside and outside of the United States could designate a non-U.S. adviser as a filing adviser, and could assert, based on the theory of operating a single advisory business, that the Advisers Act's substantive provisions generally would not apply to the U.S.-based relying advisers' dealings with their non-U.S. clients.[223] Many commenters acknowledged this concern.[224] Some commenters suggested that we address the concern by requiring that advisers indicate on their umbrella registration that they will follow applicable law.[225] We believe that Condition 2 eliminates the difficult determinations of the Advisers Act's application to these advisory relationships. The amendments we are adopting today do not change

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221 One commenter suggested that advisers that can, but do not elect to, file an umbrella registration be required to note that on Form ADV. CFA Letter.

222 ABA Committee Letter; AIMA Letter; Dechert Letter; NYSBA Committee Letter; Schulte Letter. *See also* Shearman Letter.

223 2012 ABA Letter, *supra* footnote 5 at n.9; *See* Exemptions Release, *supra* footnote 203 at Section II.D.

224 ABA Committee Letter; AIMA Letter; NYSBA Committee Letter; Schulte Letter; Shearman Letter.

225 AIMA Letter; NYSBA Committee Letter. *See also* Dechert Letter; ABA Committee Letter (suggesting that we state on Form ADV that the Advisers Act applies with respect to all U.S. clients of every registered investment adviser, and with respect to all of the activities of registered investment advisers that have their principal place of business in the United States).

the Commission's statements with respect to the cross-border application of the Advisers Act.[226]

Two commenters suggested permitting umbrella registration for an organization where all of the advisers have their principal office and place of business outside of the United States.[227] However, umbrella registration is intended to apply only where our staff has access to and can readily examine the filing and relying advisers and where the Advisers Act and the rules thereunder fully apply to all advisers (and clients) under the umbrella registration.[228] This would not be the case for a group of non-U.S. advisers.

Several commenters[229] argued that we should expand the concept of umbrella registration by registered advisers to include "umbrella reporting" by exempt reporting advisers. Many of these commenters stated, and we acknowledge, that allowing exempt reporting advisers that operate a single advisory business through multiple legal entities to file an "umbrella report" would provide many of the same benefits as umbrella registration.[230] However, we are not expanding the concept of umbrella registration to include "umbrella reporting" by exempt reporting advisers at this time. Some of the

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226 Certain commenters discussed our cross-border application of the Advisers Act. ABA Committee Letter; Dechert Letter; Schulte Letter. Most of the substantive provisions of the Advisers Act are not applied to the non-U.S. clients of a non-U.S. adviser registered with the Commission but non-U.S. advisers registered with the Commission must comply with the Advisers Act and the Commission's rules thereunder with respect to any U.S. clients (and any prospective U.S. clients) they may have. *See* Proposing Release, *supra* footnote 3 at n.57 and Exemptions Release, *supra* footnote 203 at Section II.D.

227 Schulte Letter; Shearman Letter.

228 Proposing Release, *supra* footnote 3 at Section II.A.3.

229 ABA Committee Letter; ACG Letter; AIMA Letter; ASG Letter; MFA Letter; NYSBA Committee Letter; SBIA Letter; Schulte Letter; Shearman Letter.

230 ABA Committee Letter; AIMA Letter; MFA Letter; SBIA Letter; Schulte Letter. *See also* ACG Letter.

conditions required for umbrella registration reflect certain requirements that apply only to registered advisers.[231] Different conditions might be more appropriate for ensuring that a group of exempt reporting advisers is operating a single advisory business and therefore should be able to take advantage of "umbrella reporting."

Certain commenters questioned the status of a set of Frequently Asked Questions[232] that permits certain exempt reporting advisers to file a single Form ADV on behalf of multiple special purpose entities.[233] The views of the staff as expressed in these Frequently Asked Questions are not withdrawn as a result of today's amendments to Form ADV.

Two commenters disagreed with Condition 5's requirement that 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.[234] One commenter argued that Condition 5 was too restrictive and suggested that we allow groups of related advisers with "substantially similar" codes of ethics and sets of policies

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231 Specifically, exempt reporting advisers are not subject to the requirement for compliance policies and procedures pursuant to rule 206(4)-7 under the Advisers Act or for a code of ethics pursuant to rule 204A-1 under the Advisers Act. *See* ACG Letter.

232 Frequently Asked Questions on Form ADV and IARD, *Reporting to the SEC as an Exempt Reporting Adviser* (Mar. 2012), *available at* https://www.sec.gov/divisions/investment/iard/iardfaq.shtml#exemptreportingadviser.

233 ABA Committee Letter; AIMA Letter; NYSBA Committee Letter.

234 Capital Research Letter. *See* ACG Letter (stating that Condition 5 would have the practical effect of excluding exempt reporting advisers from eligibility for umbrella registration because exempt reporting advisers are not required by Advisers Act rule 204A-1 to adopt a code of ethics, nor are they required by Advisers Act rule 206(4)-7 to adopt compliance policies and procedures).

and procedures administered by several chief compliance officers operating under a "common compliance regime" to file an umbrella registration.[235] Based on our experience with private fund advisers that operate a single private fund advisory business through multiple legal entities, we believe that they commonly have a unified compliance program which is characterized by a single code of ethics and a single set of compliance policies and procedures administered by a single chief compliance officer. Because we believe that the existence of a unified compliance program that meets the requirements of Condition 5 is a meaningful indicia of a single private fund advisory business, we are not modifying Condition 5 at this time.

Several commenters disagreed with limiting umbrella registration eligibility to advisers operating a single private fund advisory business as described in Condition 1.[236] Some commenters urged the Commission to make umbrella registration available where the advisers operate a single advisory business for types of clients other than those described in Condition 1, including registered investment companies and business development companies.[237] Another commenter disagreed with limiting eligibility to a single advisory business of any kind and suggested that umbrella registration apply to all related persons of a filing adviser.[238] However, as we stated in the Proposing Release, we do not believe umbrella registration is appropriate for advisers that are related but that

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235 Capital Research Letter.

236 ASG Letter; BlackRock Letter; Capital Research Letter; Dechert Letter; Comment Letter of Tannenbaum Helpern Syracuse & Hirschtritt LLP (Aug. 5, 2016) ("Tannenbaum Letter") (disagreed with "substantially similar or otherwise related" language, because advisers may operate a single business with different investment strategies).

237 ASG Letter; Dechert Letter. *See also* BlackRock Letter.

238 Capital Research Letter.

operate separate advisory businesses as it would compromise data quality and complicate analyses that rely on data from Form ADV.[239] We believe that by adopting umbrella registration as proposed, we are best able to accommodate the unique needs of private fund advisers that operate a single advisory business through multiple legal entities without compromising the data quality or analyses that rely on data from Form ADV.

Several commenters took issue with the proposal's requirement to determine asset-based eligibility for umbrella registration on an entity-by-entity, rather than consolidated, basis.[240] These commenters suggested that the goals of providing a clearer picture of groups of related advisers that operate as a single business and establishing a more efficient method for registration for separate legal entities that collectively conduct a single advisory business would be better served by allowing the group to determine asset-based eligibility for umbrella registration on a consolidated basis.[241] Umbrella registration was intended to consolidate the multiple registration forms that may otherwise have been required by a single advisory business. It was not intended to alter or modify the eligibility for registration with the Commission.[242]

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239 Proposing Release, *supra* footnote 3 at Section II.A.3.

240 Dechert Letter; Morgan Letter; NRS Letter; NYSBA Committee Letter. *See* MFA Letter (arguing that a registered private fund adviser that serves as a filing adviser should be able to add a relying adviser that is an exempt reporting adviser to its umbrella registration).

241 *Id*.

242 *See* Proposing Release, *supra* footnote 3 at Section II.A.3. To the extent there is concern about the eligibility of SEC registration for newly-formed relying advisers, rule 203A-2(c) provides an exemption for advisers that expect to be eligible for Commission registration within 120 days.

Some commenters disagreed with the requirement contained in Condition 1 that separately managed accounts be owned by qualified clients.[243] One commenter stated that the qualified client requirement for separately managed accounts is not related to the single business requirement.[244] Condition 1 also requires that the qualified clients be otherwise eligible to invest in the private funds advised by the filing adviser or a relying adviser and that their accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those private funds. Condition 1, including the qualified client requirement, is intended to ensure the commonality of clients that we believe is an important indicia of a single private fund advisory business. For example, if a group of advisers advised private funds as well as separately managed accounts held by non-qualified clients or separately managed accounts that pursue investment objectives or strategies that differ from the private funds they advise, we do not believe they would be operating a single private fund advisory business. The offering of separately managed accounts to clients other than qualified clients (such as retail clients) or separately managed accounts that pursue investment objectives or strategies that differ from the private funds they advise indicate that the group of advisers is engaged in lines of business that differ from a single private fund advisory business that we intend to cover with umbrella registration. Accordingly, at this time, we continue to believe that a group of advisers' ability to comply with Condition 1, including the qualified client requirement for separately managed accounts, is a meaningful indicia of a single private fund advisory business, and we are therefore adopting Condition 1 as proposed.

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243 Morgan Letter; NYSBA Committee Letter; Tannenbaum Letter. *See also* PCA Letter.

244 NYSBA Committee Letter.

We also received several comments on the new amendments to Form ADV to accommodate umbrella registration. Two commenters generally supported the benefits of new Schedule R, which requires separate reporting of indirect and direct ownership for relying advisers (similar to current Schedules A and B of Form ADV).[245] One commenter was concerned that relying advisers, which may act as special purpose general partners or similar entities and may be owned by employees sharing in the performance-based compensation paid by the fund, would in effect be forced to share the details of employee compensation on a public filing.[246] The ownership information required of relying advisers is consistent with the ownership information required of filing advisers. We believe this information will more accurately reflect the full nature and scope of the single advisory business conducted by the group of related advisers and will be more informative for advisory clients and private fund investors as well as the Commission.[247]

4. Clarifying, Technical and Other Amendments to Form ADV

We are adopting, largely as proposed, several amendments to Form ADV that are designed to clarify the form and its instructions. As noted in the Proposing Release, we believe these amendments to Form ADV will make the filing process clearer and more efficient for advisers and increase the reliability and the consistency of information provided by investment advisers. More reliable and consistent information will improve our staff's ability to interpret, understand, and place in context the information provided

245 ASG Letter; PEGCC Letter.

246 Shearman Letter.

247 *See* Proposing Release, *supra* footnote 3 at Section II.A.3.

by advisers, allow our staff to make comparisons across investment advisers and improve the risk assessment and examination program. Many of these amendments are derived from questions frequently received by our staff. Except where noted, we did not receive comments on these amendments.

a. 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.[248] Section 2.A.(9) of Schedule D is entitled "Newly Formed Adviser" and requests the adviser to make certain representations. As noted in the Proposing Release, 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, as proposed, we are deleting the phrase "newly formed adviser" from Item 2.A.(9) and Section 2.A.(9) of Schedule D. Section 2.A.(9) will be renamed "Investment Adviser Expecting to be Eligible for Commission Registration within 120 Days."[249]

b. 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

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

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

circumstances, including if the adviser has changed its structure or legal status (*e.g.*, form of organization or state of incorporation). As noted in the Proposing Release, our staff frequently receives questions from investment advisers regarding this item and, as proposed, we are 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).[250]

c. 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 are adopting several technical amendments to Item 7. As proposed, we are revising 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 is required to 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 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.[251]

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250 Amended Form ADV, Part 1A, Item 4.A. and Section 4 of Schedule D.

251 Amended 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.

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 are 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 are also adopting, as proposed, 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 a note informing advisers when they should answer yes to the first question regarding whether the private fund is a "fund of funds." We are moving the note to directly after Question 8.(a).[252] We believe this change will 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. As proposed, we are deleting 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 investments in other private funds.[253] 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 are adding text to Question 19, as proposed, to make clear that the

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252 Amended Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Questions 8.(a)-(b).

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

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.[254] As noted in the Proposing Release, 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 are adopting a clarifying revision to Question 21 as proposed 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.[255] 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.[256]

We are adopting revisions to Question 23.(a)(2) as proposed. 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").[257] We are adding text instructing advisers that they are required to answer Question 23.(a)(2) only if they answer "yes" to Question 23.(a)(1), which asks whether the

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

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

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

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

private fund's financial statements are subject to an annual audit.[258] This revision will clarify when an adviser is actually required to answer Question 23.(a)(2). We are also revising Question 23.(g) as proposed. The question currently asks whether the private fund's audited financial statements are distributed to the private fund's investors. We are adding "for the most recently completed fiscal year" to clarify the question. In addition, we are revising Question 23.(h) as proposed. This question currently asks whether the report prepared by the auditing firm contains an unqualified opinion.[259] As noted in the Proposing Release, this question has prompted questions from advisers regarding which report and what timeframe the question refers to. To clarify, we are revising the question, as proposed, to ask whether all of the reports prepared by the auditing firm since the date of the adviser's last annual updating amendment contain unqualified opinions.[260] Finally, as proposed, we are adding Question 25.(g), which requests 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. The legal entity identifier is a unique identifier associated with a single entity and is intended to provide a uniform international standard for identifying parties to financial transactions. Furthermore, the reporting of legal entity identifier information on Form ADV facilitates the ability of investors and the Commission to link the data reported with data from other filings or sources that is reported elsewhere as legal entity identifiers become more widely used by

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

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

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

regulators and the financial industry. This information will help our examination staff more readily identify the use of particular custodians by private funds.

d. Amendments to Item 8

Based on inquiries from filers, we are adopting the proposed amendments to Item 8 with a modification to clarify that newly-formed advisers should answer questions in the item based on the types of participation and interest they expect to engage in during the next year. In the Proposing Release, we did not specify that the instruction was for newly-formed advisers, and commenters expressed concern that the proposal would make Item 8 the only section in Part 1A requesting forward-looking information, and were concerned about the difficulty around gauging the likelihood of future events and the possibility for "false positives."[261] We agree and, as adopted here, we have updated the Item to address commenters' concerns.

Item 8.B.(2) of Part 1A of Form ADV currently asks whether the adviser or any related person of the adviser recommends the purchase of securities to advisory clients for which the adviser or any related person of the adviser serves as underwriter, general or managing partner, or purchaser representative.[262] The current wording has caused confusion regarding the treatment of purchaser representatives. As proposed, we are rewording 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. As noted in the Proposing

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261 *See* IAA Letter; Oppenheimer Letter; SIFMA Letter.

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

Release, this 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 or general or managing partner.[263]

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 revising Item 8.H. as proposed to break the question into two parts to increase our understanding of compensation for client referrals. Revised Item 8.H.(1) will cover compensation to persons other than employees for client referrals.[264] Revised Item 8.H.(2) will cover compensation to employees, in addition to employees' regular salaries, for obtaining clients for the firm.[265] Item 8.I. asks whether the adviser or any related person of the adviser directly or indirectly receives compensation from any person other than the adviser or related person of the adviser for client referrals. We are also adding text to Item 8.I., as proposed, to clarify that advisers should not include the regular salary that the adviser pays to an employee in responding to this item.[266]

Two commenters thought that the proposed amendment to Item 8.H was highly subjective and needed additional guidance.[267] In addition, one commenter suggested that

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

264 Amended Form ADV, Part 1A, Item 8.H.(1).

265 Amended Form ADV, Part 1A, Item 8.H.(2).

266 Amended Form ADV, Part 1A, Item 8.I.

267 *See* MMI Letter (Item 8.H.(2) should be modified to conform with Item 5 of Part 2B, where economic benefits for providing advisory services are disclosed, but not regular salaries or bonuses). *See also* PCA Letter.

Part 2B of Form ADV provided adequate disclosure of employee compensation.[268] While we appreciate these comments, we are adopting these amendments as proposed. We continue to believe Item 8.H and the accompanying instructions are sufficiently clear and are appropriate to accommodate responses from and provide flexibility to varying types of advisory businesses and compensation arrangements. As noted in the Proposing Release, we are adopting these amendments to Item 8.H to better understand how advisers compensate both their staff and third parties for client referrals. The revisions to this item do not change the scope of the information collected, but instead provide more precise information about compensation for client referrals.

e. 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 are adopting two changes to Section 9.C. of Schedule D as proposed. First, we are adding text requiring an adviser to provide the PCAOB-assigned number of the adviser's independent public accountant. This will improve our staff's ability to cross-reference information submitted through other systems and evaluate compliance with the custody rule.[269] 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 are amending 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

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268 JAG Letter.

269 Amended Form ADV, Part 1A, Section 9.C.(3) of Schedule D.

will 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.[270]

We received requests from multiple commenters to amend Item 9 of Part 1A and Section 9.C. of Schedule D related to custody.[271] We appreciate commenters' suggestions, but these suggested amendments to Item 9 or Section 9.C. are outside the scope of this rulemaking and we are not amending them at this time.

f. 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 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."[272] As proposed, we are 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

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270 Amended Form ADV, Part 1A, Section 9.C.(6) of Schedule D.

271 *See* ASG Letter; Comment Letter of Pat Hyman (June 11, 2015) ("Hyman Letter"); IAA Letter; PCA Letter and Schwab & Co. Letter.

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

(or advisory affiliate's) favor.[273] As discussed in the Proposing Release, these amendments will make disciplinary reporting uniform across registered and exempt reporting advisers, consistent with requiring exempt reporting advisers to report disciplinary events on Form ADV.

g. Amendments to Instructions and Glossary

Together with the amendments to Part 1A, we are also adopting, as proposed, conforming amendments to the General Instructions and the Glossary for Form ADV. As discussed above, we are amending the General Instructions to include instructions regarding umbrella registration. As proposed, we are also removing outdated references to "Special One-Time Dodd-Frank Transition Filing for SEC Registered Advisers" and "recent" amendments to Form ADV Part 2 that are no longer needed. We retained one sentence from those instructions that specifies that every application for registration must include a narrative brochure prepared in accordance with the requirements of Part 2A of Form ADV.[274] We also added clarifying language that exempt reporting advisers submitting other than annual amendments should update corresponding sections of Schedules A, B, C and D,[275] and provided updated mailing instructions for FINRA.[276] In

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

274 Amended Form ADV, General Instructions, Instruction 3.

275 Amended Form ADV, General Instructions, Instruction 4.

276 Amended Form ADV, General Instructions, Instruction 9.

the glossary, we are updating the definition of "Legal Entity Identifier" to reflect recent advancements in this protocol.[277]

Where applicable, we are making technical revisions, as proposed, to specify that an adviser must "apply for registration" (rather than simply "register") to more accurately reflect the rule text. As proposed, we are also deleting text in the instructions related to Item 1.O. because this text is going to appear directly in the corresponding section of Part 1 of Form ADV. We are adding 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 have also received numerous comment letters recommending additional amendments to clarify other sections of Form ADV.[278] While we appreciate commenters raising their concerns with us, these suggested recommendations are outside the scope of this rulemaking and we decline to take action to further modify Form ADV based on these comments.

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277 The definition of Legal Entity Identifier is: A "legal entity identifier" assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee (ROC) or accredited by the Global LEI Foundation (GLEIF). *See* Amended Form ADV, Glossary. In Item 1.P., we are removing outdated text referring to the "legal entity identifier" as being "in development" in the first half of 2011.

278 *See, e.g.,* ASG Letter (Items 6 and 7); JGAS Letter; PCA Letter (Item 8); NYSBA Committee Letter (Items 5 and 8 and Schedule D); PCA Letter (Items 5 and 8); T. Rowe Price Letter (definition of "regulatory assets under management" in subadvisory arrangements). BlackRock also recommended we use XML format for Form ADV filings. *See* BlackRock Letter.

B. Amendments to Investment Advisers Act Rules

1. Amendments to Books and Records Rule

We are adopting two amendments to the Advisers Act books and records rule, rule 204-2, largely as proposed, that will require 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.[279] Consistent with the proposal, we are amending rule 204-2(a)(16) by removing the ten or more persons condition and replacing it with "any person." Accordingly, under the amended rule, advisers will 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.

We are also adopting amendments to rule 204-2(a)(7). 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

[279] 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."

communications sent by such advisers.[280] Consistent with the proposal, we are amending 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.

Several commenters expressed general support for the proposed amendments to the books and records rule,[281] while other commenters felt the proposed amendments would be unnecessary and a significant burden on advisers.[282] Several commenters also suggested the proposed amendments be modified to exclude one-on-one communications that are customized responses from investors or communications with sophisticated

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280 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."

281 *See, e.g.*, ABA Committee Letter; CFA Letter; LPL Letter (supporting the proposed amendments to rule 204-2(a)(7) but suggesting an exception to rule 204-2(a)(16) for communications addressed to a single client regarding that client's particular account or security in the account); NASAA Letter; PCA Letter (finding the proposed rule change sufficient but expressing concern with the Commission linking the requirement to maintain records pertaining to calculation of individual client account performance history, which are communications and not advertising, to the enforcement of rule 206(4)-1); Comment Letter of Wells Fargo Funds Management, LLC (Aug. 11, 2015) ("Wells Fargo Letter").

282 *See, e.g.*, ACG Letter; Anonymous Letter (citing specific costs of increased training needed to implement and possible software updates); ASG Letter (asserting the amended requirement is burdensome because advisers do not always maintain copies of individual performance provided on an ad hoc basis); PEGCC Letter (stating the Commission significantly understates the burden of complying with the proposed amendments); SBIA Letter (noting that while the amendments themselves are not burdensome, when they are aggregated with other recordkeeping obligations, they could lead to overall compliance burdens for smaller advisers); Schnase Letter (advisers may find it difficult to discern whether particular materials are subject to the rule). One commenter suggested that the amendments to rule 204-2(a)(7) are not necessary because other recordkeeping provisions already require advisers to maintain those records. *See* IAA Letter.

investors or clients.[283] In addition, two commenters raised concerns about the applicability of the amendments to rule 204-2 to performance information that predated the effective date of the amendments.[284]

Based on a comment we received,[285] we are making one non-substantive modification to the proposed amendments. To clarify and avoid confusion, we are adding the new subsection (iv) of rule 204-2(a)(7) immediately following subsection (iii) of the rule and preceding the proviso regarding unsolicited market letters and records of names and addresses of persons to whom an adviser sent particular items. A commenter noted that this placement of the new subsection raised questions about whether the proviso also applied to new subsection (iv). The proviso does apply to new subsection (iv) and we believe that, by moving subsection (iv) to immediately after subsection (iii) and before the proviso, we have addressed the commenter's concern.

We are adopting the rest of the amendments to rule 204-2 as proposed. While we appreciate the concerns raised by commenters, we continue to believe 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. As noted in the Proposing Release, a recent enforcement action demonstrated to us the disadvantages of not requiring investment advisers to maintain records forming the basis of performance

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283 PEGCC Letter. *See also* Comment Letter of Michael D. Berlin (June 8, 2015) ("Berlin Letter"); LPL Letter.

284 *See* Comment Letter of Arnstein & Lehr LLP (Dec. 3, 2015); NRS Letter.

285 *See* IAA Letter (noting that the new subsection (iv) of rule 204-2(a)(7), as it currently appears, is unclear on whether an adviser would be required to maintain records relating to unsolicited market letters or other communications discussing the performance of securities that the adviser recommended to its clients).

calculations or performance communications sent to individuals.[286] Moreover, 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. Based on our staff's experience and the confirmation of several commenters, we believe that most advisers already maintain this information.[287]

We believe these records will be useful in examining and evaluating adviser performance claims. Investors will benefit to the extent that the amendments reduce the incidence of misleading or fraudulent advertising and communications. For these reasons, we are adopting the amendments to the Adviser Act books and records rule, rule 204-2, as proposed.

These amendments will apply to communications circulated or distributed after the compliance date of amended rule 204-2. Advisers that circulate or distribute communications after the compliance date that include performance information, including information on performance that predates the effective date of these amendments, will be required to maintain materials listed in rule 204-2(a)(16) that demonstrate the calculation of the performance.[288]

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286 *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).

287 *See, e.g.*, ABA Committee Letter; Morningstar Letter; PCA Letter. *See also* IAA Letter.

288 We note that to the extent this information was previously or is currently included in an advertisement, the adviser is already required to maintain the information under rule 204-2(a)(16).

2. Technical Amendments to Advisers Act Rules

We are adopting the proposed technical amendments to several rules under the Advisers Act and withdrawing transition rule 203A-5 under the Advisers Act. Consistent with the proposal, we are removing 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 of the provisions were added when we amended Form ADV and several Advisers Act rules to require advisers to electronically file their brochures with the Commission. One commenter specifically supported removal of the transition provisions.[289]

a. 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.[290] Rule 203A-5 provided a temporary exemption from the prohibition on registration for mid-sized advisers to facilitate their transition to state registration.[291] As proposed, we are withdrawing rule 203A-5 because the transition of mid-sized advisers from SEC to state registration was completed in June 2012.

b. 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.

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289 *See* NRS Letter.

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

291 *See* Implementing Release, *supra* footnote 133.

The Commission adopted rule 202(a)(11)(G)-1[292] 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.[293] As proposed, we are 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.

c. 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[294] to remain exempt from registration until March 30, 2012 under certain conditions.[295] As proposed, we are removing paragraph (e) from Rule 203-1 because the transition for private advisers is now complete.

d. Rule 203-1(b), Rule 204-1(c) and Rule 204-3(g)

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

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

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

294 *Id.*

295 *See* Implementing Release, *supra* footnote 133. 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.

with the Investment Adviser Registration Depository ("IARD").[296] 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.[297] 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. As proposed, we are removing paragraph (b) from rule 203-1 and paragraph (c) from rule 204-1 because the transition to electronic filing is now complete.[298] We also are making a technical, conforming additional change by removing rule 204-3(g) because it refers to the transition provision in rule 204-1(c).[299]

III. EFFECTIVE AND COMPLIANCE DATES

A. Effective Date

The effective date of the amendments to rules 204-2, 202(a)(11)(G)-1, 203-1, 204-1 and 204-3, and the amendments to Form ADV is [**EFFECTIVE DATE]**. Rule 203A-5 is removed effective [**EFFECTIVE DATE]**.

B. Compliance Dates

1. Amendments to Form ADV

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

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

298 Current paragraphs (c) and (d) of Rule 203-1 are redesignated as (b) and (c) and current paragraphs (d) and (e) of Rule 204-1 are redesignated as (c) and (d).

299 Current paragraph (h) of Rule 204-3 is redesignated as (g).

Several commenters requested a compliance date of at least one year after adoption.[300] Any adviser filing an initial Form ADV or an amendment to an existing Form ADV on or after October 1, 2017 will be required to provide responses to the form revisions we are adopting today. Our staff is working closely with FINRA to re-program IARD and we understand that the system is expected to be able to accept filings of revised Form ADV by October 1, 2017. This date is over one year from adoption. In addition, most advisers will not be filing their annual updating amendment until the first quarter of 2018, and therefore we believe this compliance period is appropriate.

2. Amendments to Investment Advisers Act Rules

Our amendments to the books and records rule, 275.204-2, will apply to communications circulated or distributed after October 1, 2017. As discussed in Section II.B.(1), advisers that circulate or distribute communications after October 1, 2017 that include performance information, including information on performance that predates that date, will be required to maintain the materials listed in 275.204-2(a)(16) that demonstrate the calculation of the performance.

IV. ECONOMIC ANALYSIS

A. Introduction

We are sensitive to the benefits and costs imposed by our rules and understand that there will be costs associated with complying with the amendments. The following economic analysis identifies and considers the benefits and costs—including the effects on efficiency, competition, and capital formation—that will result from the amendments to Form ADV and the amendments to and rescission of certain rules under the Investment

300 *See* Anonymous Letter; Capital Research Letter; Dechert Letter; IAA Letter; MMI Letter; SIFMA Letter.

Advisers Act. The economic effects considered in adopting the amendments are discussed below.

We are adopting 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 adopting the following amendments to Form ADV and Advisers Act rules:

- Amendments to Form ADV 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 to 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.

As discussed in the Proposing Release, we rely on information reported by investment advisers on Form ADV to monitor trends, assess emerging risks, inform policy choices and rulemaking, and assist our staff in examination and enforcement

efforts.[301] We believe that the amendments to Form ADV will improve the information provided by investment advisers to the Commission, clients and prospective clients, and may improve investor protection by informing policy choices and focusing examination activities. We also believe that the amendments to the Advisers Act books and records rule may improve investor protections by providing useful information to our examination and enforcement staff in evaluating advisers' performance claims. While, as stated above, we believe that most that can rely on umbrella registration are doing so, incorporating umbrella registration into Form ADV will make the existence of umbrella registration more widely known to advisers, which may result in more eligible advisers taking advantage of the opportunity to umbrella register. This could, make filing ADV more efficient for such advisers, reducing their filing costs. In addition, we believe that incorporating umbrella registration into Form ADV will benefit the Commission, clients and prospective clients by improving the consistency and quality of the information that private fund advisers disclose about their business.

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 amendments are discussed. The baseline includes the current requirement for investment advisers to file Form ADV, the staff guidance regarding a filing adviser filing a single Form ADV on behalf of itself and each relying adviser,[302] the current requirements for investment advisers to maintain books and records, and other current rules under the Advisers Act. The parties that will

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301 Proposing Release, *supra* footnote 3 at Section III.A.

302 *See* 2012 ABA Letter, *supra* footnote 5.

be affected by the 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 May 16, 2016, approximately 12,024 investment advisers are registered with the Commission, and 3,248 exempt reporting advisers file reports with the Commission. Approximately 8,718 investment advisers registered with the Commission (73%) reported assets under management attributable to separately managed account clients. Of those 8,718 advisers, approximately 2,538 advisers reported regulatory assets under management attributable to separately managed account clients of at least $500 million and less than $10 billion and approximately 545 advisers reported regulatory assets under management attributable to separately managed account clients of at least $10 billion.[303] Advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts will be subject to additional reporting on separately managed accounts on Form ADV. Approximately 743 registered advisers to private funds currently submit a single Form ADV on behalf of themselves and 2,587 relying advisers, relying on the 2012 ABA Letter. All investment

[303] Based on IARD system data as of May 16, 2016. 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. Item 5.D.(1)-(3) will 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.

advisers registered or required to be registered with the Commission are subject to the Advisers Act books and records rule.

As we explained in the Proposing Release, we have sought, where possible, to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the amendments to Form ADV and Investment Advisers Act rules, and reasonable alternatives.[304] In many cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide reasonable estimates. The economic effects of the amendments also depend upon a number of factors which we often cannot estimate. Examples include the extent to which investor protection and our ability to oversee investment advisers will improve, and the extent to which investors will utilize the information in Form ADV to choose or retain an investment adviser. Therefore, some of the discussion below is qualitative in nature. Several commenters raised concerns about the burdens and costs associated with these amendments, and in some cases suggested that our quantitative estimates in the Proposing Release underestimated these costs. We describe their comments below, and have modified certain provisions in response to the comments.

B. Amendments to Form ADV

Certain amendments to Form ADV are designed to address potential gaps in information, such as information about advisers' separately managed accounts, and obtain additional information on areas such as social media, additional offices, foreign clients, and wrap fee accounts. We believe this information will improve the depth and quality of information that we collect on investment advisers, which will assist the

[304] Proposing Release, *supra* footnote 3 at Section III.A.

Commission in our oversight activities and clients and potential clients in assessing advisers.[305] We also are adopting amendments to Form ADV to establish a more efficient method for multiple private fund adviser entities operating a single advisory business to register with us using a single Form ADV. Finally, we are adopting several clarifying, technical and other amendments to Form ADV.

1. Economic Baseline and Affected Market Participants

As noted above and in the Proposing Release, 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 amendments to Form ADV are discussed. Investment advisers use Form ADV to register with the Commission 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, and more frequently if required by the instructions to Form ADV.[306] Form ADV is also used by exempt reporting advisers to submit, and periodically update, reports to the Commission by completing a limited subset of items on Form ADV. Information filed on Form ADV is publicly available through the IAPD website.[307] The parties that will be affected by the 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.

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305 *See supra* Section I.

306 *See* rule 204-1(a) under the Advisers Act.

307 Certain personal identifying information is not made public.

2. Analysis of the Amendments to Form ADV and Alternatives

As discussed in Section II. above, we believe the amendments to Form ADV will improve our ability to oversee investment advisers and identify potential risks by increasing the amount, consistency, and reliability of the information disclosed by investment advisers, which will enhance our staff's ability to effectively carry out the risk-based examination program and other risk monitoring activities, and may improve investor protection by informing policy choices and focusing examination activities. The amendments to Form ADV will address certain data gaps by requiring advisers to report additional information. Clients and potential clients may indirectly benefit to the extent that the amendments improve our oversight of investment advisers.

The enhanced reporting requirements also may directly improve the ability of clients and potential clients of investment advisers to make more informed decisions about the selection and retention of investment advisers.[308] To the extent that clients and future clients use the information investment advisers file in Form ADV to differentiate between investment advisers, the enhanced reporting requirements may result in a limited increase in competition among investment advisers for clients. The amendments will likely not have a significant effect on capital formation or on the ability of investors to efficiently allocate capital across investments because the amendments do not directly relate to the amount of capital investors allocate to investments or their ability to allocate capital across investments. We further identify effects on efficiency, competition, and capital formation in the discussion below.

[308] *See supra* Section II.A.2.a.

a. Information Regarding Separately Managed Accounts

We are adopting amendments to Form ADV that will require investment advisers to report information regarding separately managed accounts, which are managed for clients other than pooled investment vehicles.[309] Based on IARD system data, approximately 73% of investment advisers registered with the Commission reported assets under management attributable to separately managed accounts.[310]

We do not currently collect information from investment advisers specific to separately managed accounts, but we currently collect detailed information about an adviser's registered investment company and private fund clients. The absence of detailed information about separately managed accounts limits the ability of our staff to understand, monitor and oversee the investment advisers that advise these accounts and recognize the risk exposures relating to these accounts. The newly reported information on Form ADV regarding separately managed accounts is intended to enhance the ability of our staff to effectively carry out our risk-based examination program and other risk-monitoring activities, as it does with other information on ADV and other filings by the Commission. The additional information regarding separately managed accounts will also assist us in addressing regulatory issues and identifying areas for additional examination and enforcement activities.

The additional information investment advisers will file relating to separately managed accounts will be publicly available.[311] As discussed above, we continue to

309 *See supra* Section II.A.1.

310 Based on IARD system data as of May 16, 2016.

311 *See supra* Section II.A.1.e.

believe that public disclosure of information about separately managed accounts on Form ADV is appropriate in the public interest as well as for the protection of investors. Commenters expressed concern relating to the public disclosure of the separately managed account information and its potential impact on competition between investment advisers. Many commenters opposing the public disclosure of separately managed account information cited the potential cost of disclosure of confidential information, particularly for advisers with a small number of separately managed account clients.[312] In addition, other commenters cited the potential disclosure of proprietary investment or trading strategies as a potential cost of publicly releasing the separately managed account information.[313]

We revised certain items on the form to address commenters' concerns regarding the potential disclosure of confidential or proprietary information. As proposed, Item 5.D. would have required investment advisers to report the number of clients even for investment advisers that manage fewer than five accounts. In addition, under the proposed amendments, Section 5.K.(2) of Schedule D would have required investment

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312 AIMA Letter; BlackRock Letter; IAA Letter; Invesco Letter; NYSBA Committee Letter; Oppenheimer Letter; PEGCC Letter; Shearman Letter; SIFMA Letter. One commenter suggested that investors may instead invest in a fund structure, or forego investment opportunities with an investment adviser altogether, rather than place assets in a separately managed account and risk the disclosure of separately managed account information. Schulte Letter. As discussed above, the modifications from the proposal should reduce the potential for the disclosure of private or sensitive information relating to separately managed accounts, and should alleviate potential investor concerns and the effect of the disclosure on their investment decisions.

313 ABA Committee Letter; Dechert Letter; IAA Letter; Invesco Letter; MFA Letter; NYSBA Committee Letter; Oppenheimer Letter; Schulte Letter; Shearman Letter; SIFMA Letter.

advisers to report the number of accounts and the net asset value of the accounts.[314] In response to comments, we have revised Item 5.D. by adding a "Fewer than 5 clients" column, which allows advisers with fewer than five clients in a particular category to avoid reporting the exact number of clients in that category. In addition, Section 5.K.(2) in Schedule D will not require investment advisers to report the number of separately managed accounts. We believe that these changes mitigate the risk of any client-specific information being disclosed. In addition, as we discussed in Section II.A., this information would be reported for one or two data points per year, depending on the amount of regulatory assets under management attributable to separately managed accounts, ninety days after the end of the adviser's fiscal year, and only on an aggregate basis for all the separately managed account clients that an adviser manages. Given the limited number of data points that advisers to separately managed accounts must report on, the fact that the information is reported in aggregate across an adviser's separately managed accounts, and the time lag between those data points and any public reporting, we do not believe that this reporting could compromise trading strategies.

In the Proposing Release, we also discussed other alternatives. For example, we could have required different information regarding separately managed account regulatory assets under management such as information at different time intervals or with different asset categories. We have determined not to require reporting at a higher frequency or in a more granular manner, because, as discussed above, we believe that the information we are requiring today will appropriately enhance our staff's ability to

[314] Also, investment advisers will be required to report the total dollar amount of borrowings that correspond to ranges of gross notional exposure and not the weighted average amount. *See supra* Section II.A.1.c.

effectively carry out our risk-based examination program and other risk assessment and monitoring activities, and that more frequent or granular reporting requirements may increase the costs to investment advisers to report the information. One commenter suggested as an alternative a separate form for separately managed account reporting that would be filed on a confidential basis, but, as discussed above, we believe that given the changes discussed above, we have mitigated concerns about client confidentiality.

We proposed to require at least some information about separately managed accounts from all advisers, and additional information from advisers with at least $150 million in regulatory assets under management. In response to commenters who requested modifications to alleviate potential reporting burdens on smaller advisers relative to the proposal, we are adopting amendments that require less information about separately managed accounts than what was proposed for investment advisers managing at least $150 and less than $500 million in regulatory assets.[315] Another alternative would be to require, as proposed, investment advisers with at least $150 million in separately managed account regulatory assets under management to provide this additional information regarding these accounts. However, the higher threshold we are adopting will reduce the number of investment advisers required to provide this additional information by approximately 2,800 advisers, thereby reducing costs for those advisers with at least $150 million but less than $500 million in assets under management that would no longer have to report the additional information. As discussed in Section II.A.1.c., the $500 million threshold was suggested by commenters and will provide us

[315] *See supra* Section II.A.1.c.

information with respect to over 98% of the separately managed account assets that would have been reported under the proposed approach.[316]

Another alternative would be to collect different information regarding derivatives in separately managed accounts. For example, commenters raised concerns about the utility of gross notional exposure as a measure of derivative risk exposures. Several commenters stated that gross notional metrics are not accurate measures of risk or leverage,[317] and expressed concern that gross notional metrics could be misleading to or misunderstood by investors without additional context.[318] Other commenters suggested alternative measures of derivative risk exposures.[319] We recognize that gross notional metrics do not always reflect the way in which derivatives are used in a separately managed account and are not a risk measure, but rather they are commonly used metrics that are comparable to information collected in Form PF regarding private funds. On balance, therefore, we continue to believe that, for most types of derivatives the gross notional metrics generally provide a measure of the scale of an account's derivatives activities that is sufficient for this regulatory purpose, which is to collect information about the scale of an account's derivatives activities, rather than to collect specific risk metrics or more granular information regarding the ways in which derivatives are used in a separate account.[320]

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316 *See* IAA Letter; NYSBA Committee Letter; Schwab & Co. Letter.

317 *See* BlackRock Letter; Dechert Letter; IAA Letter; MFA Letter.

318 *See* Dechert Letter; IAA Letter; Invesco Letter; MFA Letter; NYSBA Committee Letter.

319 *See* AIMA Letter; BlackRock Letter; Dechert Letter.

320 *See supra* Section II.A.1.c.

We are also adopting, as proposed, amendments that will require investment advisers to report the identity of the custodians that account for at least ten percent of each adviser's total separately managed account regulatory assets under management, and the amount held at such custodians. As discussed in the Proposing Release,[321] alternatives to the custodian reporting requirements include collecting different information, changing reporting thresholds, changing the frequency of reporting, obtaining information from other parties and not requiring certain information, such as the location of the custodian's office.[322] Although requiring less information would decrease the reporting requirements and the costs to investment advisers to file Form ADV, as discussed above, we believe that the reporting requirements as adopted will provide information important to us and improve the ability of our examination staff to identify advisers whose clients use the same custodian in the event a concern is raised about a particular custodian. One commenter suggested that we should collect data about custodians of separately managed accounts from the custodians themselves, but considering that the Commission does not directly regulate all custodians (including banks), we do not think this alternative appropriately addresses our regulatory objective.

b. Additional Information Regarding Investment Advisers

In addition to information regarding separately managed accounts, we are also adopting amendments to collect additional information about the business of investment advisers and other additional identifying information. For example, we are adopting

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321 *See* Proposing Release, *supra* footnote 3 at Section II.A.1.

322 *See* AIMA Letter; IAA Letter; MMI Letter; NRS Letter; Oppenheimer Letter; SIFMA Letter regarding the custodian's office location. *See also supra* Section II.A.1.d.

amendments to require investment advisers to disclose information regarding their use of social media platforms. We are also adopting amendments to request additional information about an adviser's participation in and assets under management attributable to wrap fee programs. Other amendments include replacing ranges with more precise information about the number of advisory clients and the amount of assets under management, the total number of offices that conduct investment advisory business, and information regarding each adviser's top twenty-five largest offices in terms of numbers of employees. For several items we are requiring additional identifying information. The additional identifying information includes the CIK Numbers for all advisers that have obtained one or more such numbers, PCAOB-assigned numbers for auditing firms, and the SEC file number and the CRD number for sponsors of wrap fee programs.

We believe the additional information describing the adviser's business and the additional identifying information will be useful to the risk assessment, examination, and oversight of investment advisers. For example, the information regarding social media platforms will improve our understanding of how advisers use social media to communicate with current and potential clients. The additional identifying information will improve the ability of our staff and other current and future users of Form ADV information to cross-reference information from Form ADV with information from filings and other sources to investigate and obtain a more complete understanding of the business and relationships of investment advisers, and improve our oversight of investment advisers. In addition, to the extent that current and future investment advisory clients are interested in the information, the information may improve their ability to make informed decisions about the selection and retention of investment advisers.

Several commenters expressed concern that the additional information describing the advisory business and the additional identifying information would increase the burden on investment advisers to file Form ADV.[323] In addition, commenters questioned the benefits of the additional information and the additional identifying information to clients or potential clients and to the Commission. For example, one commenter raised concern regarding the usefulness of replacing ranges with the number of advisory clients and the regulatory assets under management attributable to each client type.[324] In addition, commenters believed that information regarding social media would not be informative to investors, who may be more likely to obtain the information through the adviser's website or internet searches.[325] Several commenters also expressed concern that the reporting of adviser offices would impose a significant burden on advisers with little or no benefit to either the Commission or investors.[326]

Alternatives to the amendments regarding disclosure of additional information about advisers include the disclosure of different information, more information, or less information on topics such as social media or advisers' offices.[327] When determining the

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323 Several commenters stated that advisers would need to update computer systems to obtain this data, and raised concerns about the increased burden that our proposal would place on advisers. ASG Letter; IAA Letter; LPL Letter; MMI Letter. Commenters also expressed concerns that investment advisers would need to update the additional information on more than an annual basis which would increase the burden on investment advisers. *See* BlackRock Letter; Morningstar Letter; NRS Letter; SIFMA Letter. We have clarified that certain information, such as information about additional offices, must only be updated on an annual basis, which should help address these concerns.

324 ACG Letter.

325 ASG Letter; JAG Letter; Morgan Letter; Morningstar Letter; NRS Letter; NYSBA Committee Letter.

326 ACG Letter; CFA Letter; Morningstar Letter; NRS Letter; NYSBA Committee Letter.

327 *See supra* footnote 111 and accompanying text.

specific amendments to Form ADV for adoption, we considered what information would be important for our oversight activities and for advisory clients and prospective clients to make decisions regarding the selection or retention of investment advisers against the costs to investment advisers to report this information. We believe that the amendments we are adopting today strike an appropriate balance of providing important information to the Commission, advisory clients and prospective clients while mitigating the burden on investment advisers to report the information. As noted above, however, we recognize that the burden on some large advisers might be significant, especially in the initial reporting cycle when they are required to report the additional information for the first time. However, we believe that the burden will decrease after the initial filing because in subsequent filings, advisers will only be reporting changes to their previously reported information.

Another alternative to the 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 examinations. An absence of information about advisers also would reduce our ability to identify industry trends and assess risks.

c. Costs Applicable to Reporting Information Regarding Separately Managed Accounts and Additional Information on Form ADV

The amendments that will require investment advisers to provide additional information about certain aspects of their business will impose additional costs, at least

initially, for investment advisers to file Form ADV, but we believe based on our experience that much of the information we are requiring is readily available because it is used by investment advisers to conduct their business. Costs will vary across advisers, depending on the nature and size of an adviser's business.[328] For example, advisers that manage a limited number of separately managed accounts or that have smaller amounts of assets under management in those accounts will have fewer reporting requirements than advisers that manage a large number of separately managed accounts or that have larger amounts of assets under management in those accounts. In addition, investment advisers with a larger number of offices will have greater reporting requirements than investment advisers with fewer offices, particularly in the case of the initial filing. The one-time costs to initially report the information on Form ADV will also be greater for those investment advisers that currently do not collect or maintain the information. In addition, some amendments to Form ADV will require information that will impose a fixed filing cost that is not scalable with size, and therefore will have a relatively greater impact on small investment advisers.

To the extent possible, we have attempted to quantify the costs of these amendments to Form ADV. Certain commenters questioned the cost estimates of the amendments to Form ADV, and some commenters noted that advisers will have to create new systems or processes to capture the additional information required and that the

328 Several commenters expressed concern that the proposed amendments would increase the costs for small advisers. *See* Comment Letter of Adrian Day Asset Management (May 21, 2015) ("Adrian Day Letter"); AIMA Letter; Diercks Letter; IAA Letter; SBIA Letter; Schwab & Co. Letter. For a discussion of these comments, please see the Final Regulatory Flexibility Analysis in Section V *infra*.

Commission underestimated these costs.[329] We believe that much of the information, such as regulatory assets under management, should be readily available to advisers, and that modifications to the proposed amendments, such as the reporting requirements relating to separately managed accounts, help mitigate the costs to investment advisers of reporting the additional information. As discussed in Section V., for purposes of the increased Paperwork Reduction Act ("PRA") burden for Form ADV, we estimate that each adviser will incur average costs in connection with the amendments to Form ADV of approximately $1,273,[330] for a total aggregate cost of $15,306,552.[331]

d. Umbrella Registration

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

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329 Adrian Day Letter; Financial Engines Letter; IAA Letter; NRS Letter; PCA Letter; SBIA Letter. One commenter noted that it would require significant systems work to aggregate gross notional exposure calculations at the investment adviser level. SIFMA II Letter. Other commenters also noted that investment advisers would need to modify or update computer software systems. ASG Letter; MMI Letter.

330 We estimate that each adviser will spend, on average, 3 hours to complete the questions regarding separately managed accounts. We further estimate that the amendments to Part 1A that request other additional information will take each adviser, on average, 2 hours to complete. As a result, we estimate a 5 hour increase in the total average time burden related to the amendments to Form ADV. We expect that the performance of this function will 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 by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for a senior compliance examiner and a compliance manager are $221 and $288 per hour, respectively. [2.5 hours x $221 = $553] + [2.5 hours x $288 = $720] = $1,273.

331 12,024 advisers x $1,273 = $15,306,552.

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 that rely on umbrella registration.[332] As of May 16, 2016, approximately 743 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.

Several commenters suggested that the Commission expand the eligibility for umbrella registration to even more advisers. For example, many commenters recommended expanding eligibility for umbrella registration to non-U.S. filing advisers,[333] and other commenters suggested expanding eligibility for umbrella registration to exempt reporting advisers.[334] Other commenters recommended that we expand the eligibility for umbrella registration to apply to all related persons of a filing adviser.[335] Although expanding the eligibility for umbrella registration to all related persons might decrease the aggregate costs of filing Form ADV, as we discussed above, we do not believe umbrella registration is 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.

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332 *See supra* Section II.A.3.

333 ABA Committee Letter; AIMA Letter; Dechert Letter; NYSBA Committee Letter; Schulte Letter; Shearman Letter.

334 ABA Committee Letter; ACG Letter; AIMA Letter; ASG Letter; MFA Letter; NYSBA Committee Letter; SBIA Letter; Schulte Letter; Shearman Letter.

335 ACG Letter; Capital Research Letter; Dechert Letter; Morgan Letter; NRS Letter; NYSBA Committee Letter.

For purposes of the PRA, we estimate that each adviser that files Schedule R will incur average costs of approximately $255,[336] for a total aggregate cost of $189,465.[337] We do not believe the amendments to provide for umbrella registration will impose significant costs on investment advisers because advisers currently relying on the 2012 ABA Letter are already reporting much of the information that will be reported on Schedule R. We believe that the additional information that will be reported for relying advisers on Schedule R, such as the basis for SEC registration and form of organization, will be readily available to filing advisers.[338]

e. Clarifying, Technical and Other Amendments to Form ADV

The clarifying, technical and other amendments to Form ADV will 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 will 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.

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336 We estimate that for purposes of the PRA, the filing adviser will spend on average 1 hour completing Schedule R on behalf of its relying advisers. We expect that the 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 by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for a senior compliance examiner and a compliance manager are $221 and $288 per hour, respectively. (.5 hours x $221 = $111) + (.5 hours x $288 = $144) = $255.

337 743 advisers x $255 = $189,465.

338 One commenter was concerned that relying advisers would in effect be forced to share the details of employee compensation on a public filing. *See* Shearman Letter. The ownership information required of relying advisers, however, is consistent with the ownership information currently required of filing advisers.

To the extent the clarifying and technical amendments we adopt today would make Form ADV easier to understand and complete, the amendments will decrease future filing costs, especially for those investment advisers registering with us for the first time.

As proposed, we are adding questions to Form ADV that request an entity's legal entity identifier, if any.[339] As discussed above, the legal entity identifier is a unique identifier associated with a single entity and is intended to provide a uniform international standard for identifying parties to financial transactions. This information will help our examination staff more readily identify the use of particular custodians by separately managed accounts and private funds. Furthermore, the reporting of legal entity identifier information on Form ADV facilitates the ability of investors and the Commission to link the data reported with data from other filings or sources that is reported elsewhere as legal entity identifiers become more widely used by regulators and the financial industry. For example, this could aid in the performance of market analysis studies, surveillance activities, and systemic risk monitoring by the Commission.[340]

We do not believe that the clarifying, technical and other amendments to Form ADV will 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. As we discussed above, we believe that the clarifications and revisions to the questions and

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339 Amended Form ADV, Part 1A, Schedule D, Sections 5.K.(3)(f) (requesting the LEI, if any, for a custodian of separately managed accounts that is not a broker-dealer or that is a broker-dealer but does not have an SEC registration number) and 7.B.(1), Question 25g (similar question for private fund custodians); Schedule R, Section 1.G. (requesting LEI for relying adviser).

340 We note that, as of May 31, 2016, approximately 6.80% of all registered investment advisers report a legal entity identifier when filing Form ADV.

instructions of Form ADV will increase the efficiency of investment advisers to disclose information, and our ability to oversee investment advisers. Finally, given the nature of the clarifying, technical and other amendments to Form ADV that we are adopting today, we do not believe that these amendments will have an impact on capital formation or competition in the asset management industry or the markets in general.

f. Exempt Reporting Advisers

We believe the amendments to Form ADV will have a limited economic effect on exempt reporting advisers, including on their costs.[341] Exempt reporting advisers are currently 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). We are adopting limited amendments to the items that exempt reporting advisers are required to complete, including the amendments to Item 1 regarding the use of social media and the reporting of information on up to 25 offices.[342] We do not know the extent of social media use by exempt reporting advisers, and we recognize that these advisers will incur some costs associated with social media account reporting. We believe these costs will be limited based on the nature of exempt reporting adviser clients, which include venture capital funds and private funds. Approximately 15 of the approximately 3,248 exempt reporting advisers that file information with the Commission on Form ADV reported that they had five or more other offices. Thus, although exempt reporting advisers will incur costs to report the additional information, based on our staff's experience and given the

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341 *See supra* Section II.A.2.c. for a discussion of exempt reporting advisers and Amended Form ADV, Part 1A, Schedule D, Section 7.B.(1), Question 15(b).

342 Exempt reporting advisers will not be eligible to file new Schedule R.

nature of the clients these funds advise, we expect that the amendments should result in a limited increase in reporting costs relative to other advisers.

C. Amendments to Investment Advisers Act Rules

As discussed above, we are adopting 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 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 amendments to rule 204-2 will require investment advisers to maintain additional materials related to the calculation and distribution of performance information. The amendments to rule 204-2(a)(16) will require each adviser 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, rather than ten or more persons as currently required by the rule. The amendments to rule 204-2(a)(7) will require each adviser to maintain originals of all written communications received and copies of written communications sent by the adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations. We believe, based on our staff's experience, and several commenters agreed, that most investment advisers currently maintain the information that will be required to be maintained under amended rule 204-

2.[343] Under the amendments, each respondent will 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 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 amendments to the Advisers Act books and records rule (rule 204-2) will be evaluated. The parties that will be directly affected by the 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 12,024 investment advisers are currently registered with the Commission.

2. Analysis of the Effects of the Amendments to the Advisers Act Books and Records Rule

The amendments to the Advisers Act books and records rule (rule 204-2) will 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 amendments to the books and records rule will provide our enforcement and examination staff with additional information to review an adviser's performance communications, regardless of the number of clients or prospective clients that receive performance communications. The rule amendments may increase investor protection by increasing the disincentive for misleading or fraudulent communications, which may reduce incidents of fraud. In addition, investors may benefit from the amendments to the

[343] ABA Committee Letter; Morningstar Letter; PCA Letter.

recordkeeping rule as these records will assist our staff in uncovering fraudulent or misleading communications regarding performance.

As we discussed in the Proposing Release, to the extent that the amendments to the rule reduce misleading or fraudulent communications, the competitive position of investment advisers could be improved because clients and potential clients will receive more accurate information regarding an adviser's performance and thus will be better able to differentiate among advisers.[344] In addition, to the extent that the amendments to the rule improve the ability of clients and potential clients to differentiate among advisers, potential clients may be more likely to obtain investment advice from an investment adviser, which will increase the ability of investment advisers to compete for investor capital. The 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.

An alternative suggested by several commenters would be to exclude from the rule one-on-one communications that are "customized responses from investors or one-on-one communications with sophisticated investors or clients" about their own account performance.[345] Another alternative would be to require maintenance of records supporting performance claims in communications that are distributed or circulated to less than the current threshold of ten persons. As discussed above, we believe the veracity of performance information is important regardless of whether it is a personalized client

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344 Proposing Release, *supra* footnote 3 at Section III.C.2.

345 PEGCC Letter. *See also* Berlin Letter; LPL Letter.

communication or in an advertisement sent to ten or more persons, and the absence of such records can reduce our ability to examine and monitor advisers.[346]

Several commenters felt the proposed amendments would be unnecessary and a burden on investment advisers. Some raised concerns regarding the potential burden to comply with the amendments to rule 204-2,[347] and one commenter noted that while the amendments were not themselves burdensome, when aggregated with other recordkeeping obligations, could lead to overall compliance burdens for smaller advisers.[348] Based on our staff's experience and our analysis of the comments to the Proposing Release, however, we believe that most advisers already maintain this information.[349] We also believe that this information is useful to the examination and oversight of advisers.[350]

We estimate that, for purposes of the PRA, advisers will incur an aggregate cost of approximately $1,071,338 per year for the total hours advisory personnel will spend in complying with the amended recordkeeping requirements.[351] A possible non-quantifiable cost as a result of the amended recordkeeping requirements will be discouraging advisers

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346 *See supra* Section II.B.1.

347 *See* ACG Letter; Anonymous Letter; ASG Letter; NRS Letter; PEGCC Letter; SBIA Letter.

348 SBIA Letter.

349 ABA Committee Letter; Morningstar Letter; PCA Letter.

350 *See, e.g.*, ABA Committee Letter; Morningstar Letter; PCA Letter. *See also* IAA Letter.

351 We estimate that for purposes of the PRA, the amendments to rule 204-2 will increase the burden by 1.5 hours per adviser annually. We expect that the function of recording and maintaining records of performance information and communications will be performed by a combination of compliance clerks and general clerks at a cost of $65 per hour and $58 per hour, respectively. We anticipate that compliance clerks would perform an estimated 0.3 hours of the work created by the amendments to rule 204-2 and general clerks would perform the additional 1.2 hours. Therefore, the total cost per adviser would be (0.3 hours x $65 = $19.50) + (1.2 hours x $58 = $69.60) = approximately $89.10 for a total cost of $1,071,338 (12,024 advisers x $89.10).

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

We expect that these costs will 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 will 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 will be required.

V. PAPERWORK REDUCTION ACT ANALYSIS

The amendments that we are adopting today contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[352] In the Proposing Release, we solicited comment on the proposed collection of information requirements. We also submitted 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 amending 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.

[352] 44 U.S.C. 3501-3520.

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 adopting changes to Part 2. 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 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 May 16, 2016, approximately 12,024 investment advisers are registered with the Commission, and 3,248 exempt reporting advisers file reports with the Commission.

The currently approved total annual aggregate burden estimate for all advisers completing, amending and filing Form ADV (Part 1 and Part 2) with the Commission is 154,402 hours with a monetized cost of $36,670,427. This collection is based on: (i) total annual collection of information burden for SEC-registered advisers to file and complete Form ADV (Part 1 and Part 2), including private fund reporting, plus the burden associated with amendments to the form, preparing brochure supplements and delivering codes of ethics to clients; and (ii) the 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 private fund reporting, plus the burden associated with amendments to the form.

As discussed above, we are adopting 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 clarify and address technical and other issues in certain Form ADV items and instructions. The amendments we are adopting will increase the information requested in Part 1A of Form ADV, and we expect that this will correspondingly increase the average burden on an adviser filing Form ADV.

As discussed in Sections II.A. and II.B. of this Release, we received several comments that addressed whether the amendments to Form ADV and Rule 204-2 are necessary, whether there are ways to enhance the quality, utility, and clarity of the information to be collected, and whether we could further minimize the burden. Certain

commenters addressed the accuracy of our burden estimates for the proposed collections of information, suggesting in general that our estimates were too low.[353] We have considered these comments and have made certain modifications designed to address these and other comments received, and we are increasing our PRA burden estimates related to the amendments.

We discuss below, in three subsections, the estimated revised collection of information requirements for Form ADV: first, we provide estimates for the revised burdens resulting from the 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. The paperwork burdens of filing an amended Form ADV, Part 1A will 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.

1. Changes in Average Burden Estimates

As a result of the differing burdens on advisers to complete Form ADV, we have divided the effect of the 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 amendments to Part 1A of Form ADV excluding those changes related to private funds; second, we discuss the amendments to Form ADV related to registered advisers to private funds, including the amendments to Section 7.B. of Schedule D and the new Schedule R

[353] ACG Letter; Adrian Day Letter; ASG Letter; Anonymous Letter; IAA Letter; NRS Letter; PEGCC Letter; PCA Letter; SBIA Letter. *See also* AIMA Letter (discussed reputational and marketing costs associated with separately managed account reporting).

that will implement umbrella registration; and third, we address the amendments to Form ADV affecting exempt reporting advisers.

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

We are adopting amendments to Part 1A, some of which are merely technical changes or very simple in nature, and others that will require more time for an adviser to prepare a response. Advisers should have ready access to all the information necessary to respond to the items we are adopting today in their normal course of operations, because they likely maintain and use the requested information in connection with managing client assets. We anticipate that the responses to many of the questions will be unlikely to change from year to year, which will minimize the ongoing reporting burden associated with these questions.

i. Amendments Related to Reporting of Separately Managed Account Information

The 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. These amendments will 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 will include regulatory assets under management reported by asset type, borrowings and derivatives information, and the identity of custodians that hold at least ten percent of separately managed account regulatory assets under management. We believe that advisers to separately managed accounts 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 requested information may be used by advisers for operational reasons or account reporting, we expect that these amendments may 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. We are adopting new Items 5.K.(1) through (4) and Sections 5.K.(1) and 5.K.(3) largely as proposed with certain modifications in response to comments we received. With respect to Section 5.K.(2), in order to minimize the burden on advisers with a smaller amount of separately managed account assets under management, we initially proposed to require: (1) 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; and (2) advisers with regulatory assets under management attributable to separately managed accounts of at least $10 billion to report information as of that date and six months before that date. As we discussed above,[354] at the suggestion of several commenters,[355] we increased the proposed $150 million reporting threshold to $500 million in order to further alleviate the reporting burdens on smaller advisers without compromising our objectives.[356] In

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354 *Supra* Section II.A.1.

355 IAA Letter; NYSBA Committee Letter; Schwab & Co. Letter.

356 Amended Form ADV, Part 1A, Schedule D, Section 5.K.(2).

response to commenters, we modified Section 5.K.(2) to base the reporting of borrowings and derivatives on regulatory assets under management in separately managed accounts, rather than the net asset value of the accounts, as proposed, because advisers may not characterize their separately managed accounts using net asset value.[357] We also eliminated the requirement to report number of accounts. We believe that these changes will further decrease the burden on advisers to report information on separately managed accounts.

In the Proposing Release, we estimated that each adviser would spend, on average, 2 hours completing the questions regarding separately managed accounts in the first year a new or existing investment adviser completes these questions.[358] A number of commenters expressed concern that our estimate of the paperwork burdens associated with our proposed questions regarding separately managed accounts was too low.[359] We are revising our estimate of the time that that it will take each adviser to complete the questions regarding separately managed accounts in the first year a new or existing adviser completes these questions from 2 hours to 3 hours.[360] We have arrived at this

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357 *See* IAA Letter.

358 Proposing Release, *supra* footnote 3 at Section IV.A.1.a.i.

359 Adrian Day Letter; ASG Letter (one adviser suggested that outsourcing the work might be costly; another adviser reported having the required data but estimated that it would take approximately 1 hour to compile data in response to Sections 5.K.1(a) and (b)); IAA Letter. *See* also NYSBA Committee Letter (the proposed amendments to Form ADV and the Advisers Act will significantly increase the reporting obligations for many advisers); NRS Letter (burden estimate for proposed amendments is completely unrealistic and extremely low); SIFMA II Letter (most exposure data is gathered at the client or account level and it would require significant systems work to aggregate these values at the adviser level).

360 Based on IARD system data as of May 16, 2016, approximately 8,718 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

burden estimate by considering the following: (1) the changes we are making 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); (2) our efforts to further alleviate the reporting burden on advisers that manage a smaller amount of separately managed account regulatory assets under management; and (3) the comments we received on our proposed burden estimate. We recognize that burdens will vary across advisers. Advisers that advise a large number of separately managed accounts, or that have significant regulatory assets under management attributable to separately managed accounts, will incur a greater burden than advisers that have no separately managed account clients or a limited number of such clients. Based on our review of advisers' separately managed account business and the new reporting requirements, we believe that, on average, 3 hours is an appropriate estimate.

ii. Other Additional Information Regarding Investment Advisers

We are adding several new questions and amending existing questions on Form ADV regarding an adviser's identifying information, advisory business, and financial industry affiliations. The revised questions primarily refine or expand existing questions or request information we believe that advisers already have for compliance purposes. For example, we are requiring each adviser to provide CIK Numbers if it has one or more

companies and pooled investment vehicles, indicating that they have assets under management attributable to separately managed accounts. Of those approximately 8,718 advisers, we estimate that 2,538 (approximately 29%) reported at least $500 million and less than $10 billion in regulatory assets under management from separately managed accounts and 545 (approximately 6%) reported at least $10 billion in regulatory assets under management from separately managed account clients.

such numbers and to provide the address of each of the adviser's social media pages. Other questions require advisers to provide readily available or easily accessible information, such as the amendment to Part IA, Item 1.O. that requires advisers to report their assets within ranges. However, some of the revised questions may take longer for advisers to complete, such as the amendments to Schedule D, Section 1.F that require information about an adviser's 25 largest offices other than its principal office and place of business. While this information should be readily available to an adviser because it should be aware of its offices, a clerk will be required to manually enter expanded information about the adviser's offices in the first year the adviser responds to the item and then make updates in subsequent years. Some commenters thought that additional office reporting would be a significant burden on advisers.[361] As discussed above in Section II.A.2.a., we recognize that the burden on some large advisers might be significant, especially in the initial reporting cycle when they are required to report their additional offices for the first time. However, we believe that the burden will decrease after the initial filing because in subsequent filings, advisers will only be reporting changes to their previously reported additional office information. We have clarified that advisers will only be required to update the information in Section 1.F. on an annual basis, which should help address some of the concerns raised by commenters about the burden associated with this amendment.[362]

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361 ACG Letter; CFA Letter; Morningstar Letter (for larger advisers, additional office reporting would require substantial time, although that burden would ease after the initial reporting period); NYSBA Committee Letter.

362 ASG Letter (updating additional office reporting more than annually would be burdensome); Morningstar Letter (the Commission should clarify how often additional office reporting needs to be updated).

We are adopting 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 will require advisers to provide readily available 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 revised items will 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 revised disclosure regarding wrap fee programs or non-U.S. clients will 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.

In the Proposing Release, we estimated that the proposed revisions 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 the questions.[363] Some commenters expressed concern that our burden estimate was too low,[364] while others expressed concern about the impact of the increased overall compliance burden on

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363 Proposing Release, *supra* footnote 3 at Section IV.A.1.a.ii.

364 ASG Letter (amendments will increase the time required to prepare response to Item 5). *See* NYSBA Committee Letter (the proposed amendments to Form ADV and the Advisers Act will significantly increase the reporting obligations for many advisers); NRS Letter (burden estimate for proposed amendments is completely unrealistic and extremely low).

smaller advisers.[365] We are revising our estimate of the time that these amendments to Part 1A of Form ADV and Schedule D will take each adviser to complete in the first year a new or existing adviser responds to these questions from 1 hour to 2 hours. We have arrived at this revised burden estimate, in part, by considering the following: (1) the relative complexity and availability of the information required by the revised items to the current form and its approved burden; (2) the number and types of advisers affected by the proposed amendments; and (3) the comments we received on our proposed burden estimate. We understand that the burden will vary across advisers depending on their business and the factors discussed in this section. The burden for some advisers will exceed our estimate, and the burden for others will be less due to the nature of their business. We believe, on balance, that 2 hours is a reasonable estimate.

iii. Clarifying, Technical and Other Amendments

As discussed above, we are adopting several further amendments to Form ADV that are designed to clarify the Form and its instructions and address technical issues. These changes primarily refine existing questions. For example, we are 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. Similarly, we are amending 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 amendments do not change the scope or

365 PCA Letter (Commission grossly underestimated the potential cost for many advisers, particularly small advisers); SBIA Letter (Commission should consider the impact of the increased overall compliance burden on smaller private fund advisers).

amount of information required to be reported on Form ADV, we do not believe that these clarifying, technical, and other amendments to Part 1A of Form ADV will increase or decrease the average total collection of information burden for advisers in their first year filing Form ADV. We did not receive comments regarding reporting burdens associated with these technical and clarifying amendments.

As a result of the amendments to Form ADV Part 1A discussed above, including the amendments related to separately managed accounts, additional items, and technical and clarifying amendments, we estimate the average total collection of information burden will increase 5 hours to 45.74 hours per adviser for the first year that an adviser completes Form ADV (Part 1 and Part 2).[366]

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

We are adopting several amendments to Part 1A, Schedule D, Section 7.B. that will refine and enhance existing information we receive about advisers to private funds. In addition, as part of our codification of umbrella registration, we are adding 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 amendments to Part 1A, Schedule D, Section 7.B will be readily available or easily accessible to advisers to private funds. For example, the PCAOB assigned number for a private fund auditor should be readily available or easily accessible to that private fund's adviser. As discussed in Section II.A.2.c., we modified Part 1A,

366 Currently approved estimate of the average total collection of information burden per SEC registered adviser for the first year that an adviser completes Form ADV (40.74 hours) + 3 hours to complete the questions about separately managed accounts + 2 hours to complete other additional information regarding investment advisers = 45.74 hours.

Schedule D, Section 7.B.(1). Question 15(b) regarding sales of private funds to qualified clients in response to commenters' concerns. The question is now limited to 3(c)(1) funds, and requires only a "yes" or "no" answer, rather than requiring advisers to report the percentage of a private fund held by qualified clients. 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 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 amendments to Schedule D, Section 7.B, including the changes from the proposal, will increase or decrease the total annual burden because the information is readily available to advisers. Most of the comments on the amendments to Part 1A, Schedule D, Section 7.B. concerned the qualified client question, Question 15(b), which we modified as discussed above.

The incorporation of umbrella registration into Form ADV will 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 will 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 will 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,[367] and the amendments to Form ADV will provide for umbrella registration and simplify the process of umbrella registration for advisers that operate as a single advisory business. We are adding a new schedule to Part 1A, Schedule R, that will need to be filed with respect to each relying adviser, as well as a new question to Schedule D, that will link a private fund reported on Form ADV to the specific (filing or relying) adviser that advises it. Schedule R will require identifying information, basis for Commission registration, and ownership information about each relying adviser.

We believe that much of the information we are requiring in Schedule R will 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 new requirements will cause 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. We also believe that new filing advisers using umbrella registration will readily have information available about their relying advisers, because they are operating as a single advisory business. In addition, filing advisers will be able to check a box indicating that the relying adviser's address is the same as the filing adviser, rather than provide the relying adviser's address. We did not receive comments on the burdens specific to Schedule R.

[367] *See* 2012 ABA Letter, *supra* footnote 5.

There is no currently approved annual burden estimate for completing Schedule R because it is a new Schedule. Taking into account the scope of information we are requesting, our understanding that much of the information is readily available and currently required on Form ADV, and the fact that private fund advisers that file an umbrella registration in reliance on staff guidance had on average three relying advisers,[368] we continue to 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.

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), are not required to complete Part 2 and will not be eligible to file new Schedule R. The amendments to Part 1A will revise only Items 1 and 7 for exempt reporting advisers. We believe that most exempt reporting advisers are unlikely to be required to do additional reporting in response to the new requirements. In addition, the information required by these revisions should be readily available to any adviser as part of their ongoing operations and management of client assets.[369] For instance, we estimate that almost all exempt reporting advisers currently have five or fewer offices (the number

368 Based on IARD system data as of May 16, 2016, approximately 743 investment advisers rely on the 2012 ABA Letter to file Form ADV on behalf of themselves and 2,587 relying advisers, an average of approximately 3 relying advisers per filing adviser.

369 One commenter suggested that it would be burdensome for exempt reporting advisers to begin collecting information on the qualified client status of their investors. As discussed above, we have made revisions to address this concern. SBIA Letter.

of offices currently required by Form ADV) and thus will not have to provide information on additional offices.[370] Accordingly, we do not expect that the amendments will increase or decrease the currently approved total annual burden estimate of two hours per exempt reporting adviser initially completing these items on Form ADV, other than Item 7.B. We also do not expect that the amendments will increase or decrease the currently approved total annual burden estimate of 1 hour per private fund per exempt reporting adviser initially completing Item 7.B. and Section 7.B. of Schedule D.

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 To Complete Form ADV (Part 1 and Part 2)

We estimate that, as a result of the amendments to Form ADV Part 1A discussed above, other than those applicable to private funds, the average total collection of information burden per respondent will increase 5 hours to 45.74 hours per adviser for the first year that an adviser completes Form ADV (Part 1 and Part 2).

Approximately 12,024 investment advisers are currently registered with the Commission.[371] Not including private fund reporting, the estimated aggregate annual

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370 Based on IARD system data as of May 16, 2016, approximately 15 exempt reporting advisers reported on Form ADV that they had five or more other offices.

371 Based on IARD system data as of May 16, 2016. 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.

burden applicable to these advisers will be 549,978 hours[372] (60,120 hours of it attributable to the amendments).[373] As with the Commission's prior Paperwork Reduction Act estimates for Form ADV, we believe that most of the paperwork burden will be incurred in advisers' initial submission of the amended Form ADV, and that over time this burden will decrease substantially because the paperwork burden will be limited to updating information.[374] Amortizing the burden imposed by Form ADV over a three-year period to reflect the anticipated period of time that advisers will use the revised Form will result in an average annual burden of an estimated 183,326 hours per year[375] (20,040 hours per year of it attributable to the amendments),[376] or approximately 15.25 hours per year for each adviser currently registered with the Commission.[377]

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 aggregate burden estimate applicable to these advisers for the first year that they complete Form ADV but excluding private fund reporting requirements is 45,740 hours (1,000 advisers x 45.74 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 will use the revised Form will result in an average annual aggregate burden

372 45.74 hour per-adviser burden x 12,024 advisers = 549,978 hours.

373 5 hour per-adviser additional burden x 12,024 advisers = 60,120 hours.

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

375 549,978 hours/3 = 183,326 hours.

376 60,120 hours/3 = 20,040 hours.

377 183,326 hours/12,024 advisers = 15.25 hours.

estimate of 15,247 hours per year[378] (1,667 of it attributable to the amendments).[379] We therefore estimate the total annual aggregate hour burden to be 198,573 hours per year.[380]

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

The amount of time that a registered adviser managing private funds will 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 4,469 registered advisers advise a total of 30,896 private funds, and, on average, 300 Commission-registered advisers annually will make their initial filing with us reporting approximately 1,100 private funds.[381] The currently approved 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. As a result, we estimate that the private fund reporting requirements that are applicable to registered investment advisers will add 31,996 hours to the overall annual aggregate burden estimate applicable to registered advisers.[382] As noted above, we believe most of the paperwork burden will be incurred in connection with advisers' initial submission of Form ADV, and that over time the burden will decrease substantially because it will be limited to

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378 45,740 hours/3 = 15,247 hours.

379 5,000 hours/3 = 1,667 hours.

380 15,247 hours for new registrants + 183,326 hours for existing registrants = 198,573 hours.

381 Based on IARD system data as of May 16, 2016. 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, Section 7.B. per fund in a three year period, which is the period after which estimates are required to be renewed.

382 1 hour x 30,896 private funds = 30,896 hours. 1 hour x 1,100 private funds = 1,100 hours. 30,896 hours + 1,100 hours = 31,996 hours.

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 annual aggregate average estimated burden of 10,665 hours per year.[383]

We also are adding a new Schedule R to Form ADV for umbrella registration. Of the advisers currently registered with us, we estimate based on current Form ADV filings that approximately 743 registered advisers currently submit a single Form ADV on behalf of themselves and approximately 2,587 relying advisers.[384] Taking into account the scope of information we are requesting 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 will add 743[385] hours to the annual burden estimate applicable to registered advisers. We estimate that, on average, 51 SEC registered advisers annually will make their initial filing with us as filing advisers, increasing the overall annual burden for advisers to private funds an additional 51 hours, or 794 hours in total. Amortizing these hours for a three year period as with the rest of the burdens associated with Form ADV, results in an annual aggregate average burden of 265 additional hours per year.[386]

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383 31,996 hours/3 = 10,665 hours.

384 Based on IARD system data as of May 16, 2016.

385 743 filing advisers x 1 hour per completing Schedule R = 743 hours.

386 794 hours/3 = 265 hours.

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 with delivering codes of ethics to clients as a result of the offer of such codes contained in the brochure. We anticipate that our amendments to Form ADV will increase the currently approved annual burden estimate associated with annual amendments to Form ADV from 6 hours to 8 hours per adviser, but will not impact interim updating amendments to Form ADV.[387]

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 system data, that advisers, on average, make one interim updating amendment (at an estimated 0.5 hours per amendment) and one annual updating amendment each year. Our estimate for the annual updating amendment in the Proposing Release was 7 hours per amendment each year. Based on the comments we received regarding separately

[387] Certain commenters were concerned about the burden on advisers of updating social media information via interim updating amendments. *See* BlackRock Letter; Oppenheimer Letter; SIFMA Letter. As discussed in Section II.A.2.a., we clarified that we are limiting the required social media reporting to an adviser's accounts on publicly available social media platforms where the adviser controls the content. We believe changes to such platforms will be less frequent than changes, for example, to platforms where an adviser does not control the content. Therefore, we do not believe that updating social media reporting via interim updating amendments will increase the currently approved annual burden estimate associated with interim updating amendments.

managed account reporting that are discussed above,[388] we are increasing the estimate to 8 hours per amendment each year.[389]

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,[390] and an additional 1 hour per year to prepare new brochure supplements as required by Part 2.[391] 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 upon request.[392] We are not changing these estimates as the amendments do not affect these requirements. The increase in the annual burden estimate associated with annual amendments to Form ADV and the increase in the number of registered investment advisers since the last approval of this collection, increase the total annual burden for advisers registered with us attributable to amendments, brochure supplements and obligations to deliver codes of ethics to 141,883 hours.[393]

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388 AIMA Letter; ASG Letter; IAA Letter; SIFMA Letter. *See also* Adrian Day Letter; NRS Letter.

389 (12,024 advisers x 0.5 hours/other than annual amendment) + (12,024 advisers x 8 hours/annual amendment) = 102,204 hours.

390 12,024 hours attributable to interim amendments to the brochure supplements = 12,024 advisers x 1 hour = 12,024 hours.

391 12,024 hours attributable to new brochure supplements = 12,024 advisers x 1 hour = 12,024 hours.

392 15,631 hours for the delivery of codes of ethics = 12,024 advisers x 1.3 hours = 15,631 hours.

393 102,204 hours + 12,024 hours + 12,024 hours + 15,631 hours = 141,883 hours.

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 adopting 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 did not receive any comments regarding these specific costs.

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 will be $4,400 for legal services and $5,000 for compliance consulting services, in each case, for those advisers who engage legal counsel or consultants. We anticipate that a quarter of these advisers will seek the help of outside legal services and half will seek the help of compliance consulting services. Accordingly, we estimate that 250 of these advisers will use outside legal services, for a total annual aggregate cost burden of $1,100,000,[394] and 500 advisers will use outside compliance consulting services, for a total annual aggregate cost burden of $2,500,000,[395] resulting in a total annual aggregate cost burden among all

[394] 25% x 1000 SEC registered advisers = approximately 250 advisers. $4,400 for legal services x 250 advisers = $ 1,100,000.

[395] 50% x 1000 SEC registered advisers = 500 advisers. $5,000 for consulting services x 500 advisers = $2,500,000.

respondents of $3,600,000 for outside legal and compliance consulting fees related to drafting narrative brochures.[396]

We estimate that 6% 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 IARD system data as of May 16, 2016, 4,469 registered advisers currently advise private funds. We therefore estimate that approximately 268 registered advisers may incur costs of $37,625 each on an annual basis, for an aggregate annual total cost of $10,083,500.[397]

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 $13,683,500.[398]

b. Estimated Annual Burden Applicable to Exempt Reporting Advisers

i. Estimated Initial Hour Burden

Based on IARD system data as of May 16, 2016, there are approximately 3,248 exempt reporting advisers currently filing reports with the SEC.[399] The paperwork burden applicable to these exempt reporting advisers consists of the burden attributable to

396 $1,100,000 + $2,500,000 = $3,600,000.

397 268 advisers x $37,625 = $10,083,500.

398 $3,600,000 + $10,083,500 = $13,683,500.

399 Based on IARD system data as of May 16, 2016. 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.

completing a limited number of items in 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 amendments to Form ADV will 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 aggregate 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 increases to 7,496 hours.[400] Amortizing the burden imposed by Form ADV over a three-year period to reflect the anticipated period of time that advisers will use the revised Form ADV results in an average annual aggregate burden estimate of 2,499 hours per year.[401]

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 amendments to Form ADV will affect the per exempt reporting adviser burden of completing Item 7.B. and Section 7.B. of Schedule D. Based on IARD system data as of May 16, 2016, we estimate that, on average, the 3,248 exempt reporting advisers report

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400 2 hours x (3,248 reporting exempt reporting advisers + 500 new exempt reporting advisers) = 7,496 hours.

401 7,496 hours/3 = 2,499 hours.

11,915 funds. In addition, we estimate that the 500 new exempt reporting advisers making their initial filing will report approximately 1,000 funds, resulting in a total aggregate annual burden of 12,915 hours.[402] Amortizing this total burden over three years as we did above for registered advisers results in an average annual aggregate burden estimate of 4,305 hours per year,[403] or approximately 1 hour per year, on average, for each exempt reporting adviser.[404]

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 system data, each exempt reporting adviser will amend its form 2 times per year. On average, these consist of one interim updating amendment (at an estimated 0.5 hours per amendment)[405] and one annual updating amendment (at an estimated 1 hour per amendment)[406] each year. In addition, we anticipate 200 final filings by exempt reporting advisers annually (at an estimated 0.1 hours per filing).[407] We do not anticipate that our amendments to Form ADV will affect the per exempt reporting adviser burden for amendments or final filings. However, based on the increase in the number of

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402 11,915 funds + 1,000 funds = 12,915 funds. 12,915 x 1 hour = 12,915 hours.

403 12,915 hours/3 years = 4,305 hours per year.

404 4,305 hours per year/3,748 exempt reporting advisers = 1.1 hours per year.

405 3,248 exempt reporting advisers x .5 hours = 1,624 hours.

406 3,248 exempt reporting advisers x 1 hour = 3,248 hours.

407 200 final filings x 0.1 hours = 20 hours.

exempt reporting advisers, the total annual burden associated with exempt reporting advisers filing amendments and final filings has increased to 4,892 hours.[408]

3. Total Revised Burdens

The revised total annual aggregate 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 filing amendments to the form, preparing brochure supplements and delivering codes of ethics to clients, is estimated to be approximately 351,386 hours per year, for a monetized total of approximately $89,427,737.[409]

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

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408 1,624 hours + 3,248 hours + 20 hours = 4,892 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 when requested as required by Part 2 of Form ADV.

409 198,573 hours per year attributable to initial preparation of Form ADV + 10,665 hours per year attributable to initial private fund reporting requirements + 265 hours per year for initial umbrella registration + 141,883 hours per year attributable to filing amendments, brochure supplements and obligations to deliver codes of ethics = 351,386 hours. One commenter stated that the work of compliance is generally carried out by the Chief Compliance Officer with limited assistance from others. PCA Letter. However, based on our experience, we expect that at most Commission registered advisers, the performance of this function will 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 by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these positions are $221 and $288 per hour, respectively. (175,693 hours x $221) + (175,693 hours x $288) = $89,427,737.

burdens associated with private fund reporting, amendments to the form and final filings, will be approximately 11,696 hours per year, for a monetized total of $2,976,632.[410]

We estimate that with today's amendments to Form ADV, the revised total aggregate annual hour burden for the form will be approximately 363,082 hours and the monetized total will be approximately $92,404,369.[411] This is an increase of 208,680 hours and $55,733,942 from the currently approved annual aggregate burden estimates,[412] 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; but also to the larger registered investment adviser and exempt reporting adviser population since the most recent approval, adjustments for inflation, and the amendments to Form ADV. The resulting blended average per adviser burden for Form ADV is 23.77 hours (for a monetized total of $6,051),[413] which consists of an average annual burden of 29.22 hours[414] for each of the estimated 12,024 SEC registered advisers, and 3.60 hours[415] for each of the estimated 3,248 exempt reporting advisers.

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410 2,499 hours per year attributable to initial preparation of Form ADV + 4,305 hours per year attributable to initial private fund reporting requirements + 4,892 hours per year for amendments and final filings = 11,696 hours. We expect that the performance of this function will 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 by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these positions are $221 and $288 per hour, respectively. (5,848 x $221) + (5,848 x $288) = $2,976,632.

411 351,386 hours + 11,696 hours = 363,082 hours. $89,427,737 + $2,976,632 = $92,404,369.

412 363,082 hours - 154,402 hours = 208,680 hours. $92,404,369 - $36,670,427 (currently approved monetized burden estimate) = $55,733,942.

413 363,082 hours/(12,024 registered advisers + 3,248 exempt reporting advisers) = 23.77 hours. $92,404,369/(12,024 registered advisers + 3,248 exempt reporting advisers) = $6,051.

414 351,386 hours/12,024 registered advisers = 29.22 hours.

Registered investment advisers are also expected to incur an annual cost burden of $13,683,500, an increase of $10,083,500 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. The information provided to the Commission in connection with staff examinations, investigations and oversight programs would be kept confidential subject to the provisions of applicable law. The collection of information is mandatory.

The amendments to rule 204-2 will 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 annual aggregate burden estimate of 1,986,152 hours. Based upon updated IARD system data as of May 16, 2016, the

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[415] 11,696 hours/3,248 exempt reporting advisers = 3.60 hours.

approximate number of investment advisers is 12,024. As a result of 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 195,603 hours.[416] We estimate that most advisers provide, or seek to provide, performance information to their clients. Under the amendments, each adviser will be required to retain the records in the same manner, and for the same period of time, as other books and records under the rule.[417] We believe based on staff experience, and several commenters confirmed,[418] 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. In the Proposing Release, we estimated that the proposed amendments to rule 204-2 would increase the burden by approximately .5 hours per adviser annually. We received several comments suggesting that our estimated burden increase was significantly too low.[419] While we continue to believe that most advisers currently maintain this information, after considering the commenters' concerns,

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416 12,024 advisers x 181.45 hours = 2,181,755 hours. 2,181,755 hours – 1,986,152 hours = 195,603 hours.

417 Specifically, the records must be maintained in an easily accessible place for at least five years from the end of the fiscal year during which the last entry was made in such record, the first two years in an appropriate office of the investment adviser. *See* rule 204-2(e)(1).

418 *See, e.g.*, ABA Committee Letter; Morningstar Letter; PCA Letter.

419 ACG Letter; Anonymous Letter (estimates a training burden of 4-8 hours per effected employee in the first year; estimates that there will be additional expenses for data analysis and storage); PEGCC Letter (argues that, with respect to the proposed amendments to rule 204-2, the Commission significantly understated the burden on advisers and presented little evidence to support its burden estimate). *See* ASG Letter.

we now estimate that the amendments to rule 204-2 will increase the burden by approximately 1.5 hours per adviser annually for a total annual aggregate increase of 18,036 hours.[420] The revised annual aggregate burden estimate will be 2,199,791 hours.[421] The revised average burden estimate of the recordkeeping requirements under rule 204-2 per SEC-registered adviser will be approximately 183 hours per year.[422] The burden may be less than 1.5 hours for those advisers that currently maintain this information, and we acknowledge that the burden may be greater than 1.5 hours for advisers that frequently provide performance information to clients and do not currently maintain this information. We believe that, on average, 1.5 hours is an appropriate estimate for this collection of information.

Advisers will 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 annual aggregate cost burden is $108,708,557.10. We estimate the hourly wage for compliance clerks to be $65 per hour, including benefits, and the hourly wage for general clerks to be $58 per hour, including benefits.[423] For each adviser, 183 annual burden hours will 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

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420 12,024 advisers x 1.5 hours = 18,036 hours.

421 1,986,152 (current approved burden) + 195,603 (burden for additional registrants) + 18,036 (burden for amendments) = 2,199,791 hours.

422 2,199,791 hours/12,024 advisers = 183 hours.

423 Our hourly wage rate estimate for a compliance clerk and general clerk is based on data from the SIFMA *Office Salaries in the Securities Industry Report 2013 (*"SIFMA *Office Salaries Report")*, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93, to account for bonuses, firm size, employee benefits and overhead.

of this work, and general clerks will perform the remaining 151 hours. The total annual cost per respondent therefore will be an estimated $10,838,[424] for a total annual aggregate burden cost estimate of approximately $130,316,112,[425] an increase of $21,607,555 from the currently approved total annual aggregate cost per respondent.[426] The increase in cost is attributable to a larger registered investment adviser population since the most recent PRA approval, an adjustment for inflation in the hourly wage estimates for a compliance clerk and general clerk, and the rule 204-2 amendments discussed in this Release.

VI. FINAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared the following Final Regulatory Flexibility Act Analysis, in accordance with section 4(a) of the Regulatory Flexibility Act, in relation to our amendments to Form ADV and rule 204-2 and our technical amendments to certain other rules under the Advisers Act.[427] We prepared an Initial Regulatory Flexibility Analysis ("IRFA") in the Proposing Release.[428]

A. Need for and Objectives of the Amendments

We are adopting amendments to Form ADV that are designed to provide the Commission with additional information about registered investment advisers, including information about separately managed accounts, provide for umbrella registration for

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424 (32 hours per compliance clerk x $65) + (151 hours per general clerk x $58) = ($2,080 + $8,758) = $10,838.

425 $10,838 per adviser x 12,024 advisers = approximately $130,316,112.

426 $130,316,112 - $108,708,557 = $21,607,555.

427 5 U.S.C. 604(a).

428 *See* Proposing Release, *supra* footnote 3 at Section V.

multiple investment advisers operating as a single advisory business, and provide technical, clarifying and other amendments to certain Form ADV provisions. The amendments to Form ADV will improve the depth and quality of the information provided by investment advisers to the Commission and the public.

We are also amending the Advisers Act books and records rule to 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 amendments to the books and records rule will improve investor protections by providing useful information in examining and evaluating advisers' performance claims.

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

B. Significant Issues Raised by Public Comments

The Commission is sensitive to the burdens that the Form ADV and rule amendments may have on small advisers. In the Proposing Release, we requested comment on matters discussed in the IRFA. In particular, we sought comments on the number of small entities, particularly small advisers, to which the amendments to Form ADV and Advisers Act rules would apply, and the impact of those amendments on the small entities, including whether the effects would be economically significant.

The Commission received one comment letter specifically addressing the IRFA[429] in addition to several comment letters that discussed the impact of the proposed amendments to Form ADV on smaller advisers.[430] With respect to the reporting on Form ADV regarding separately managed accounts, several commenters suggested decreasing the burden on small advisers by increasing the threshold for reporting derivatives and borrowings information in Schedule D, Section 5.K.(2) to $500 million from the proposed $150 million.[431] As discussed above, we are persuaded by commenters that this is a sensible accommodation that would allow us to meet our regulatory objectives while alleviating reporting burdens on smaller advisers, and have raised the minimum threshold for reporting information about the use of borrowings and derivatives in separately managed accounts to advisers with at least $500 million in separately managed account regulatory assets under management, from the proposed threshold of $150 million.[432] A commenter also suggested not requiring advisers with less than $150 million in separately managed account assets to report any separately managed account information, including in Sections 5.K.(1) and 5.K.(3).[433] As discussed in Section II.A.1. of this Release, we recognize that this reporting will impose some burden on all advisers with separately managed accounts, but we believe that gathering this information is important for us to gain a full understanding of assets held in separately managed accounts managed by

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429 PCA Letter.

430 Adrian Day Letter; AIMA Letter; Diercks Letter; IAA Letter; SBIA Letter; Schwab & Co. Letter.

431 IAA Letter; NYSBA Committee Letter; Schwab & Co. Letter.

432 *See* Amended Form ADV, Part 1A, Schedule D, Section 5.K.(2).

433 AIMA Letter; *see also* ASG Letter (suggesting establishing a minimum regulatory assets under management threshold above which reporting requirements would be imposed).

investment advisers of different sizes. We also have limited both the scope of information to be reported and the frequency of reporting, which lessens the burden on small advisers.

One commenter described more generally the burdens of the amendments to Form ADV on smaller private fund advisers.[434] Other commenters noted that smaller advisers may not have additional staff to meet any increased burdens in reporting, and that smaller advisers may not have the staffing that we assume in calculating monetary burdens on advisers.[435] Another commenter noted that the requirement to report information about additional offices may have a disproportionate impact on smaller advisers.[436]

With respect to the amendments that we proposed to the Books and Records rule, one commenter noted that while the amendments were not themselves burdensome, when aggregated with other recordkeeping obligations, could lead to overall compliance burdens for smaller advisers.[437] While we acknowledge commenters' concerns, records from advisers of all sizes are required for our staff to be able to conduct its oversight of advisers, including examinations and investigations. Further, based on our staff's experience and the information provided by several commenters,[438] we believe that most advisers already maintain this information. Thus, we are adopting the amendments largely as proposed.

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434 *See* SBIA Letter.

435 Adrian Day Letter; Diercks Letter; PCA Letter.

436 NRS Letter.

437 SBIA Letter.

438 *See, e.g.*, ABA Committee Letter; Morningstar Letter; PCA Letter.

With respect to the amendments to Form ADV and the Advisers Act rules generally, we believe that they will improve the depth and quality of information provided by investment advisers to the Commission and the public and our oversight of advisers. Information about advisers of all sizes is required for the Commission and its staff to perform their roles in overseeing advisers. Accordingly, we are not modifying the reporting requirements for smaller advisers.

C. Small Entities Subject to the Rule and Rule Amendments

The amendments to Form ADV and the Advisers Act rules 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. [439]

Our rule and Form ADV amendments will 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

[439] Rule 0-7(a) under the Advisers Act.

state regulators. Based on IARD system data, we estimate that as of May 16, 2016, approximately 526 advisers that are small entities are registered with the Commission.[440] Because these advisers are registered, they, like all SEC-registered investment advisers, will all be subject to the amendments to Form ADV, rule 204-2 and other Advisers Act rules.

The only small entity exempt reporting advisers that are subject to the amendments are 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.[441] 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 14.3% of registered investment advisers with their principal office and place of business outside the U.S. are small entities. Based on IARD system data as of May 16, 2016, there are approximately

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

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

1,428 exempt reporting advisers with their principal office and place of business outside the U.S. We estimate that 14.3% of those advisers, approximately 204 exempt reporting advisers, are small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to Form ADV and rule 204-2 impose certain reporting, recordkeeping, and compliance requirements on all Commission-registered advisers, including small advisers. All Commission-registered small advisers are required to file Form ADV and include the new information required by the amendments, and all Commission-registered small advisers are subject to the amended recordkeeping requirements. Our technical amendments to other Advisers Act rules do not impose different reporting, recordkeeping, or other compliance requirements on small advisers.

Form ADV Amendments

The amendments to Form ADV require registered investment advisers to report different or additional information than what is currently required. Approximately 526 small advisers currently registered with us are subject to these requirements. We expect these 526 small advisers to spend, on average, 5 hours to respond to the new and amended questions, not including items relating to private fund reporting, which is

discussed below.[442] We expect the aggregate cost to small advisers associated with this process is $669,335.[443]

In addition, of these 526 small advisers, we estimate that 3 small advisers currently rely on the 2012 ABA Letter to act as filing advisers for their relying advisers.[444] We expect that our changes to codify umbrella registration will take 3 hours[445] in the aggregate, at a cost to small advisers of $764.[446] We do not know how many additional small advisers will use umbrella registration as incorporated into Form ADV.

We do not estimate any increase or decrease in burden related to our amendments for small private fund advisers, other than the hours related to Schedule R, or for exempt

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442 *See* Section V. of this Release.

443 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 by Commission staff to account for an 1,800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $221 and $288 per hour, respectively. 526 small advisers x 5 hours = 2,630 hours. [1,315 hours x $221 = $290,615] + [1,315 hours x $288 = $378,720] = $669,335.

444 Based on IARD system data as of May 16, 2016.

445 For purposes of the Paperwork Reduction Act, we estimated in Section V of this Release that amendments to codify umbrella registration will take an additional 1 hour per filing adviser.

446 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. Data from the SIFMA *Management and Professional Earnings Report*, modified by Commission staff to account for an 1,800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $221 and $288 per hour, respectively. 3 filing advisers x 1 hour = 3 hour. [1.5 hours x $221 = $332] + [1.5 hours x $288 = $432] = $764.

reporting advisers. The total estimated costs associated with our amendments to Form ADV that we expect will be borne by small advisers is $670,099.[447]

Amendments to Books and Records Rule

Our amendments to rule 204-2's performance information recordkeeping provisions 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 will create reporting, recordkeeping, and other compliance requirements for small advisers. As discussed in the Paperwork Reduction Act Analysis in Section V. above, the amendments to rule 204-2 will increase the burden by approximately 1.5 hours per adviser. We expect the aggregate cost to small advisers associated with our amendments is $46,700.[448]

E. Agency Action to Minimize Effect on Small Entities

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 Form ADV and rule amendments, the Commission considered the following alternatives: (i) the establishment

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447 $669,335+ $764 = $670,099. These costs are discussed in Paperwork Reduction Act Analysis in Section V. of this Release.

448 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 Report* modified by Commission staff to account for an 1,800-hour work year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $65 per hour and $58 per hour, respectively. 526 small advisers x 1.5 hours = 789 hours. [0.17 x 789 hours x $65 = $8,718] + [0.83 x 789 hours x $58 = $37,982] = $46,700.

of differing compliance or reporting requirements that take into account the resources available to small advisers; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the 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 Form ADV and rule amendments, or any part thereof, for such small entities.

Regarding the first and second alternatives, the adopted amendments require reporting on separately managed accounts on Schedule 5.K.(2) of Form ADV only for advisers with $500 million or more of regulatory assets under management attributable to separately managed accounts. Further, we require semi-annual information filed annually for those advisers with regulatory assets under management attributable to separately managed accounts of at least $10 billion, and annual information for other advisers.[449] Requiring no reporting on these items for advisers with less than $500 million, and less detailed reporting for advisers with less than $10 billion, is designed to balance our regulatory needs for this type of information while seeking to minimize 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 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. Information about advisers of

[449] Amended Form ADV, Part 1A, Schedule D, Sections 5.K.(1).

all sizes is required for the Commission and its staff to perform their role in overseeing investment advisers. Accordingly, we are not modifying the reporting requirements for smaller advisers.

Regarding the second alternative for the other amendments to Form ADV and the Advisers Act rules, we considered whether further clarification, consolidation, or simplification of the compliance requirements was feasible or necessary. In response to commenters, we clarified certain instructions and items, which apply to all advisers filing Form ADV. 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 does 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 considered using performance rather than design standards with respect to the amendments to Form ADV and rule 204-2 but, for the Commission and its staff to perform their role in overseeing advisers, 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.

VII. STATUTORY AUTHORITY

The Commission is adopting 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 section 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 amending 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 amending 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 amending rule 203-1 pursuant to authority in section 206A of the Advisers Act [15 U.S.C. 80b-6A]. The Commission is rescinding rule 203A-5 and amending 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)]. The Commission is amending rule 204-3 pursuant to authority in sections 204, 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b-4, 80b-6(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 amended as follows.

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

1. The general authority citation for part 275 continues to read as follows, and the sectional authority for § 275.230A-5 is removed.

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.

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§ 275.202(a)(11)(G)-1 [Amended]

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

§ 275.203-1 [Amended]

3. Section 275.203-1 is amended by:

    a. In the first sentence of paragraph (a) removing the phrase "Subject to paragraph (b), to" and adding in its place "To";

    b. Removing paragraph (b);

    c. In the NOTE TO PARAGRAPHS (a) AND (b), revising the paragraph heading;

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

    e. Removing paragraph (e).

    The revision reads as follows:

§ 275.203-1 Application for investment adviser registration.

(a) * * *

NOTE TO PARAGRAPH (a): * * *

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§ 275.203A-5 [Removed and Reserved]

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

§ 275.204-1 [Amended]

5. Section 275.204-1 is amended by:

    a. In the first sentence of 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).

§ 275.204-2 [Amended]

6. Section 275.204-2 is amended by:

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

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

The revision reads as follows:

§ 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;

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

* * * * *

§ 275.204-3 [Amended]

7. Section 275.204-3 is amended by:

a. Removing paragraph (g); and

b. Redesignating paragraph (h) as paragraph (g).

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

8. The authority citation for Part 279 continues to read as follows:

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

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

a. In the instructions to the form, revising the sections 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.

August 25, 2016

Brent J. Fields
Secretary