

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation S-P; OMB Control No. 3235-0537; SEC File No. 270-480.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

#### • Regulation S-P—Privacy of Consumer Financial Information

The Commission adopted Regulation S-P (17 CFR part 248) under the authority set forth in section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804), sections 17 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q, 78w), sections 31 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-30(a), 80a-37), and sections 204 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4, 80b-11). Regulation S-P implements the requirements of Title V of the Gramm-Leach-Bliley Act ("Act"), which include the requirement that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties ("privacy notice"). Title V of the Act also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option ("opt out notice"). The privacy notices

required by the Act are mandatory. The opt out notices are not mandatory for financial institutions that do not share nonpublic personal information with nonaffiliated third parties except as permitted under an exception to the statute's opt out provisions. Regulation S-P implements the statute's requirements with respect to broker-dealers, investment companies, and registered investment advisers ("covered entities"). The Act and Regulation S-P also contain consumer reporting requirements. In order for consumers to opt out, they must respond to opt out notices. At any time during their continued relationship, consumers have the right to change or update their opt out status. Most covered entities do not share nonpublic personal information with nonaffiliated third parties and therefore are not required to provide opt out notices to consumers under Regulation S-P. Therefore, few consumers are required to respond to opt out notices under the rule.

Compliance with Regulation S-P is necessary for covered entities to achieve compliance with the consumer financial privacy notice requirements of Title V of the Act. The required consumer notices are not submitted to the Commission. Because the notices do not involve a collection of information by the Commission, Regulation S-P does not involve the collection of confidential information. Regulation S-P does not have a record retention requirement *per se*, although the notices to consumers it requires are subject to the recordkeeping requirements of Rules 17a-3 and 17a-4.

Currently, there are approximately 20,434 covered entities (approximately 6,280 registered broker-dealers, 4,939 investment companies, and, out of a total of 10,210 registered investment advisers, 9,215 registered investment advisers that are not also registered broker-dealers) that must prepare or revise the annual and initial privacy notices they provide to their customers. To prepare or revise their privacy notices, each of the approximately 11,219 covered entities that is a broker-dealer or investment company requires an estimated 40 hours at a cost of \$2,424 (32 hours of professional time at \$70 per hour plus 8 hours of clerical or administrative time at \$23 per hour) and each of the approximately 9,215 covered entities that is an investment adviser but not also a broker-dealer requires an estimated 5 hours at a cost of \$303 (4 hours of professional time at \$70 per hour plus 1 hour of clerical or administrative time at \$23 per hour). Thus, the total compliance burden per year is 494,835 hours (40 hours for

11,219 broker-dealers and investment companies, and 5 hours for 9,215 investment advisers that are not also broker-dealers ( $40 \times 11,219 = 448,760$ ,  $5 \times 9,215 = 46,075$ , and  $448,760 + 46,075 = 494,835$ ), and \$29,987,001 ( $\$2,424 \times 11,219 = \$27,194,856$ ,  $\$303 \times 9,215 = \$2,792,145$ , and  $\$27,194,856 + \$2,792,145 = \$29,987,001$ ).

The wage estimates of \$70 per hour for professional time and \$23 per hour for clerical or administrative time used in the foregoing calculations are based on estimated mean hourly wages of \$68.23 for lawyers and \$22.56 for all other legal support workers in the U.S. Department of Labor's Bureau of Labor Statistics' November 2004 National Industry-Specific Occupational Employment and Wage Estimate, NAICS 523100—Securities and Commodity Contracts Intermediation and Brokerage (available online, as of March 2, 2006, at [http://www.bls.gov/oes/current/naics4\\_523100.htm](http://www.bls.gov/oes/current/naics4_523100.htm)) adjusted upward for inflation by 2.5% based on the percentage increase in the employment cost indexes for white collar workers and for administrative support, including clerical, workers from December 2004 to December 2005, as reported in the U.S. Department of Labor's Bureau of Labor Statistics' Employment Cost Index for wages and salaries for private industry workers by industry and occupational group (not seasonally adjusted) (available online, as of March 2, 2006, at <http://www.bls.gov/news.release/eci.t06.htm>).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: March 20, 2006.

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2500/803-187]

### Adler Management, L.L.C.; Notice of Application

March 21, 2006.

**AGENCY:** Securities and Exchange Commission (SEC).

**ACTION:** Notice of application for exemption under the Investment Advisers Act of 1940 ("Advisers Act").

**APPLICANT:** Adler Management, L.L.C. ("Applicant").

**RELEVANT ADVISERS ACT SECTIONS:** Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

**SUMMARY OF APPLICATION:** Applicant requests that the SEC issue an order declaring it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11), which defines the term "investment adviser."

**FILING DATES:** The application was filed on July 25, 2005, and amended on January 31, 2006.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 13, 2006, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicant, Adler Management, L.L.C., c/o Luz Campa, 10350 Bren Road West, Minnetonka, Minnesota 55343.

**FOR FURTHER INFORMATION CONTACT:** Catherine E. Marshall, Senior Counsel, or Jennifer Sawin, Assistant Director, at (202) 551-6787 (Division of Investment Management, Office of Investment Adviser Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant was organized in 1996 to serve exclusively as a "family office" for the members of the Rauenhurst family, its entities and charities. Applicant states this will continue to be the sole purpose for its existence. Applicant provides services to: (i) Gerald and Henrietta Rauenhurst, their lineal descendants (including by adoption) and spouses of their lineal descendants (the "Rauenhurst Family"); (ii) entities that receive investment advisory services from Applicant that are beneficially and solely owned by (with one exception as provided herein) or solely for the benefit of various members of the Rauenhurst Family, and several entities that do not and will not receive investment advisory services from Applicant and each of which is majority-owned by members of the Rauenhurst Family and is also owned by employees or former employees of Applicant ("Rauenhurst Family Entities"); and (iii) charitable entities that were created by and are administered under the discretion of members of the Rauenhurst Family ("Rauenhurst Family Charities"). (Persons receiving services from Applicant are referred to herein as "Clients". Clients that receive investment advisory services from Applicant are referred to herein as "Advisory Clients".)

2. Applicant is owned exclusively by members of the Rauenhurst Family and its Board of Directors is composed exclusively of members of the Rauenhurst Family. Applicant's Board of Directors oversees all aspects of Applicant's operations.

3. Applicant represents that as a "family office", it provides a wide range of general management services to Clients, including budget preparation and management services; recordkeeping, bookkeeping and accounting services; federal and state tax return preparation services; real asset management services; insurance and risk management services; custodian and executor services; estate planning services; federal and state tax planning; coordination with accountants and attorneys; investment advisory services; and other administrative services.

4. Applicant represents that the fees it receives cover only its costs and are not intended to generate a profit.

5. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant represents that it is not listed in any phone book as an investment adviser or in any other directory as an investment adviser.

6. Applicant represents that it does not engage in advertising and that it will not solicit or accept as a client any person who is not a member of the Rauenhurst Family, a Rauenhurst Family Entity or a Rauenhurst Family Charity.

### Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities \* \* \*." Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC except as provided in section 203(b) and 203A. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant represents that it currently relies on the registration exemption provided in section 203(b)(3) of the Advisers Act because it only has thirteen (13) clients. Applicant represents, however, that this exemption is operating as a constraint on its ability to provide advisory services to Clients, as children in the Rauenhurst Family cease to be minors and leave their childhood households. Applicant represents that it is not eligible for any other registration exemptions provided in section 203(b) and that it is not prohibited from registering with the SEC under section 203A(a) because Applicant has assets under management of not less than \$25,000,000.

4. Applicant requests that the SEC issue an order pursuant to section 202(a)(11)(F) declaring it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11).

5. Applicant states that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it was formed to be