PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows

Paragraph 6005 Class E airspace areas extending upward from 770 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Beaver Dam, WI [New]

Hillside Hospital Heliport, WI
Point in Space Coordinates
(Lat. 42° 26′ 45″N., long. 88° 48′ 36″W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Hillside Hospital Heliport excluding that airspace within the Juneau, WI, Class E airspace area.

* * * * *

Issued on Des Plaines, Illinois, on July 15, 1988.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–19851 Filed 7–23–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1733, File No. S7–28–97]

RIN 3235–AH22

Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers With Principal Offices and Places of Business in Colorado or Iowa

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting rule amendments under the Investment Advisers Act of 1940 to exempt multi-state investment advisers from the prohibition on Commission registration and to revise the definition of the term ''investment adviser representative.'' The Commission also is adopting amendments to Schedule I to Form ADV to reflect the enactment of investment adviser statutes in Colorado and Iowa. The rule amendments refine rules implementing the Investment Advisers Supervision Coordination Act.

DATES: Effective Date: The rule amendments will become effective August 31, 1998.

Compliance Date: Supervised persons of Commission-registered investment advisers must comply with amendments to § 275.203A–3(a)(3)(i) no later than December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn-Gail Gilheany, Attorney, or Jennifer S. Choi, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Stop 5–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 203A–2 (17 CFR 275.203A–2), rule 203A–3 (17 CFR 275.203A–3), rule 206(4)–3 (17 CFR 275.206(4)–3), Form ADV (17 CFR 279.1), Schedule G to Form ADV (17 CFR 279.1), and Schedule I to Form ADV (17 CFR 279.1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (''Advisers Act''). The Commission also is withdrawing rule 203A–5 (17 CFR 275.203A–5) and Form ADV–T (17 CFR 279.3) under the Advisers Act.

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Executive Summary

Section 203A of the Advisers Act generally prohibits an investment adviser from registering with the Commission unless it has more than $25 million of assets under management or is an adviser to a registered investment company. The Commission is adopting amendments to rule 203A–2 under the Advisers Act to exempt from the prohibition on Commission registration those advisers that are required to register as investment advisers in 30 or more states.

Section 203A preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons except for certain ''investment adviser representatives.'' The Commission is adopting amendments to rule 203A3 under the Advisers Act to revise the definition of investment adviser representative. Under the amended definition, supervised persons of Commission-registered investment advisers are investment adviser representatives (and therefore subject to state qualification requirements) if they have more than five clients who are natural persons and more than ten percent of their clients are natural persons.

Under section 203A, the Commission retains regulatory authority for an investment adviser with a principal office and place of business in a state that does not have an investment adviser statute. The Commission is adopting amendments to Schedule I to Form ADV to reflect that Colorado and Iowa have recently enacted investment adviser statutes.

I. Background

Two years ago, Congress enacted the National Securities Markets Improvement Act of 1996 (''1996 Act'').[1] Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act (''Coordination Act''), amended the Advisers Act to, among other things, reallocate federal and state responsibilities for regulation of investment advisers by limiting federal registration and preempting certain state laws. Under section 203A(a) of the Advisers Act,[2] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the investment adviser (i) has at least $25 million of assets under management, or (ii) is an investment adviser to an investment

[1] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] 15 U.S.C. 80b–3a(a).

company registered under the Investment Company Act of 1940 (''Investment Company Act'').[3] Section 203A(b) of the Advisers Act generally preempts state regulatory requirements with respect to Commission-registered investment advisers and their supervised persons, except for certain of their investment adviser representatives.[4]

Last year, the Commission adopted new rules and rule amendments to implement the Coordination Act.[5] These implementing rules included exemptions from the statutory prohibition on Commission registration for four types of investment advisers.[6] The rules also defined certain terms used in the Coordination Act, including the term ''investment adviser representative.'' [7] At the time it adopted these rules, the Commission anticipated that experience with the new regulatory scheme might reveal the need for additional rules or refinement of existing rules.

On November 13, 1997, the Commission issued a release proposing (1) amendments to rule 203A–2 to exempt multi-state investment advisers from the prohibition on Commission registration; (2) two alternative amendments to rule 203A–3 to revise the definition of investment adviser representative; and (3) other amendments to clarify certain implementing rules (''Proposing Release'').[8] The proposed amendments to rule 203A–2 would allow an investment adviser that does not have $25 million of assets under management but has a national or multi-state practice that requires it to register as an investment adviser in 30 or more states to register with the Commission. The proposed amendments to rule 203A–3 would correct an anomaly in the current rule and allow supervised persons who provide services to a small number of institutions to have accommodation clients without being subject to state qualification requirements.

In response to the proposals, the Commission received 12 comment letters from professional and trade organizations, investment advisers, the North American Securities Administrators Association, Inc. (''NASAA''),[9] and two state securities administrators. Most commenters supported the proposals.

II. Discussion

A. Multi-State Investment Adviser Exemption from Prohibition on Registration With the Commission

As discussed above, section 203A limits registration with the Commission, in most cases, to investment advisers with at least $25 million of assets under management and preempts state adviser regulation of these investment advisers.[10] The $25 million threshold was designed to allocate regulatory responsibility to the Commission for larger investment advisers, whose activities are likely to affect national markets, and to relieve these larger advisers of the burdens associated with multiple state regulations.[11] Congress recognized, however, that some investment advisers with less than $25 million of assets under management may have national businesses for which multiple state registration would be burdensome.[12] To reduce the burden on these advisers, the Commission was given authority in section 203A(c) of the Advisers Act to exempt investment advisers, by rule or order, from the prohibition on Commission registration if the prohibition would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes'' of section 203A.[13]

Using this authority, the Commission adopted rule 203A–2, which permits Commission registration for nationally recognized statistical rating organizations and certain pension consultants, affiliated investment advisers, and newly formed investment advisers. The Commission also, by order, has granted individual exemptive relief to certain investment advisers that do not have $25 million of assets under management but have a national or multi-state practice that requires them to register as investment advisers in 30 or more states.[14] The Commission proposed to amend rule 203A–2 to codify the exemptions provided by the individual orders to investment advisers required to be registered in multiple states.[15]

Under proposed rule 203A–2(e), an investment adviser required to be registered as an investment adviser with 30 or more state securities authorities would register with the Commission even if it has less than $25 million of assets under management. Once registered with the Commission, the investment adviser would remain eligible for the exemption as long as the adviser would, but for the exemption, be obligated to register in at least 25 states, five fewer than when it initially registered under the multi-state exemption (''five-state provision''). The Commission also proposed to permit newly formed advisers to rely on the multi-state exemption in conjunction with the ''start-up adviser'' exemption in paragraph (d) of rule 203A2.[16]

Commenters generally supported the multi-state proposal as being consistent with the language and intent of the Coordination Act. Commenters agreed that the five-state provision should be the minimum cushion to prevent an investment adviser registered with the Commission from having to de-register and then re-register with the Commission frequently as a result of a change in registration obligation in one or a few states. All commenters concurred with the Commission that

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[3] 15 U.S.C. 80a. The Commission has authority to deny registration to any applicant that does not meet the criteria for Commission registration and to cancel the registration of any adviser that no longer meets the registration criteria. Sections 203(c) and (h) of the Advisers Act (15 U.S.C. 80b–3(c) and (h)).

[4] 15 U.S.C. 80b–3a(b). In addition, state law is preempted with respect to advisers that are excepted from the definition of investment adviser under section 202(a)(11) of the Advisers Act (15 U.S.C. 80b–2(a)(11)).

[5] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) (62 FR 28112 (May 22, 1997)) (''Implementing Release'').

[6] *See* rule 203A–2 (17 CFR 275.203A–2). *See infra* section II.A of this Release.

[7] *See* rule 203A–3 (17 CFR 275.203A–3). *See infra* section II.B of this Release.

[8] Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1681 (Nov. 13, 1997) (62 FR 61866 (Nov. 19, 1997)).

[9] NASAA represents the 50 U.S. state securities agencies responsible for the administration of state securities laws, also known as ''blue sky laws.''

[10] Section 203A(a) and (b). Notwithstanding section 203A(b)(1), states retain authority over Commission-registered advisers under state investment adviser statutes to: (1) investigate and bring enforcement actions with respect to fraud or deceit against an investment adviser or a person associated with an investment adviser; (2) require filings, for notice purposes only, of documents filed with the Commission; and (3) require payment of state filing, registration, and licensing fees. *See* section 203A(b)(2) of the Advisers Act (15 U.S.C. 80b–3a(b)(2)). Moreover, section 203A(b) specifically preserves state law with respect to investment adviser representatives of Commission-registered advisers who have a place of business in the state. *See infra* section II.B of this Release.

[11] *See* S. REP. NO. 293, 104th Cong., 2d Sess. 3–5 (1996).

[12] *Id.* at 5.

[13] 15 U.S.C. 80b–3a(c).

[14] *See* Arthur Andersen Financial Advisers, Investment Advisers Act Release Nos. 1637 (June 16, 1997), 62 FR 33689 (Notice of Application), 1642 (July 8, 1997 64 SEC Docket 2417 (Order); Ernst & Young Investment Advisers LLP, Investment Advisers Act Release Nos. 1638 (June 16, 1997), 62 FR 33692 (Notice of Application), and 1641 (July 8, 1997), 64 SEC Docket 2416 (order); KPMG Investment Advisors, Investment Advisers Act Release Nos. 1639 (June 17, 1997), 62 FR 33945 (Notice of Application), and 1643 (July 8, 1997), 64 SEC Docket 2418 (Order); and ProFutures Capital Management, Inc., Investment Advisers Act Release Nos. 1686 (Dec. 11, 1997), 62 FR 66153 (Notice of Application), and 1693 (Jan. 8, 1998), 66 SEC Docket 0835 (Order).

[15] Proposing Release, *supra* note 8, at section II.A.

[16] 17 CFR 275.203A–2(d).

newly formed investment advisers should be permitted to rely on the multi-state exemption in conjunction with the ''start-up'' adviser exemption.

Most commenters supported the 30-state threshold as an appropriate measure of whether an adviser has a national business. Three commenters, however, recommended lowering the threshold because they believed that investment advisers that do business in fewer than 30 states also may have national businesses. NASAA opposed lowering the 30-state threshold, arguing that an adviser that is required to register in less than 30 states does not have a national business. At this time, the Commission believes the 30-state threshold to be an appropriate standard for measuring whether an adviser has a national business and therefore is adopting the threshold and the rule, as proposed.

Rule 203A–2(e), as adopted, requires an investment adviser applying for registration in reliance on the multi-state exemption to submit a representation to the Commission that the adviser is obligated to register in 30 or more states.[17] To continue to rely on the exemption, the adviser annually must provide a representation that it is obligated to register in at least 25 states.[18] The investment adviser also must maintain a record of the states that the adviser believes it would, but for the exemption, be required to register.[19] A newly formed investment adviser not registered in any state could register with the Commission if it reasonably expected that it would be required to register in 30 or more states within 120 days after the date its registration becomes effective.[20]

B. Definition of Investment Adviser Representative

Section 203A preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons,[21] but permits a state to continue to license, register, or otherwise qualify an ''investment adviser representative'' who has a place of business in the state.[22] Under the current definition of investment adviser representative in rule 203A–3, supervised persons of Commission-registered investment advisers are not deemed to be investment adviser representatives and thus not subject to state qualification requirements if no more than ten percent of their clients are natural persons other than ''excepted persons'' [23] (''ten percent allowance'').[24]

1. Accommodation Clients

The ''ten percent allowance'' in the definition of investment adviser representative was designed to permit supervised persons who provide advisory services principally to clients other than natural persons to continue to accept ''accommodation clients'' without being subject to state qualification requirements.[25] The ten percent allowance, however, can pose a problem for supervised persons with one or a few institutional clients: for a supervised person to have one accommodation client without being subject to state qualification requirements, the supervised person would need to have at least ten clients that are not retail clients.

To address this concern, the Commission proposed two alternative amendments to the definition of investment adviser representative to allow supervised persons who provide services to a few institutional clients to have accommodation clients without being subject to state qualification requirements.[26] Under the first alternative, the Commission proposed to retain the ten percent allowance and to add a provision to the rule that would permit supervised persons to have, without being subject to state qualification requirements, the greater of five natural person clients or the number of natural person clients permitted under the ten percent allowance (''Alternative I''). Under the second alternative, the Commission proposed to eliminate the ten percent allowance and to permit supervised persons to have, without being subject to state qualification requirements, an unlimited number of accommodation clients who are (1) partners, officers, or directors of the investment adviser for

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[17] 17 CFR 275.203A–2(e). In determining the number of states in which an adviser is required to register, the investment adviser would be required to exclude those states in which it is not obligated to register because of the applicable state laws or the national de minimis standard of section 222(d) of the Advisers Act (15 U.S.C. 80b–18a). At the time of its application for registration with the Commission or upon subsequent amendment of its registration to reflect reliance on the multi-state exemption, the investment adviser would include on Schedule E to Form ADV an undertaking to withdraw from registration with the Commission if it would no longer be required to register in at least 25 states at the time of filing Schedule I. Under the rule, as adopted, an investment adviser that indicates that it is no longer obligated to register in at least 25 states would be required to withdraw from Commission registration by filing Form ADV–W within 180 days after the end of the adviser's fiscal year. Rule 203A–2(e)(3)(17 CFR 275.203A–2(e)(3)). The Commission is adopting a slight revision to the grace period for withdrawing from Commission registration. Under the rule as proposed, the period would have run from the date on which the adviser filed its Schedule I to indicate that it was no longer eligible to maintain its registration under the multi-state exemption. Under the rule as adopted, the period begins to run on the date on which the adviser was obligated by rule 204–1(a) to file such amendment. 17 CFR 275.204–1(a).

[18] This representation must be attached to the investment adviser's annual amendment to Form ADV revising Schedule I. Rule 203A–2(e)(2) (17 CFR 275.203A–2(e)(2)). If an adviser that is registered with the Commission in reliance on another exemption (*e.g.*, affiliated adviser exemption) relies on the multi-state exemption because the adviser can no longer rely on the other exemption (*e.g.*, the affiliate has moved its principal office and place of business), the adviser would be required: (1) to attach a representation to Schedule I that, but for the exemption, it would be required to register with at least 25 states; (2) to check box (a)(x) of Part I of Schedule 1; and (3) to include an undertaking on Schedule E that the adviser will withdraw from Commission registration if it would be no longer required to register in at least 25 states. If the adviser is no longer eligible for Commission registration under any criterion and therefore cannot check any box in (a) of Part I of Schedule I, then the adviser must check box (b) of part I of Schedule I to Form ADV and file Form ADV–W within 180 days after the end of the adviser's fiscal year. *See* rule 203A–2(e)(3).

[19] Rule 203A–2(e)(4)(17 CFR 275.203A–2(e)(4)).

[20] After the 120-day period, the investment adviser would be required to file an amendment to Form ADV revising Schedule I and attach a representation that, but for the multi-state exemption, the investment adviser would be required to register in at least 25 states. *See* rules 203A–2(d) and 203A–2(e)

[21] The term supervised person is defined in the Advisers Act as ''any partner, officer, director * * * or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.'' Section 202(a)(25) of the Advisers Act (15 U.S.C. 80b–2(a)(25)).

[22] Section 203A(b).

[23] Rule 203A–3(a)(3)(i) defines ''excepted persons'' as natural persons who have $500,000 or more under management with the representative's investment advisory firm immediately after entering into the advisory contract with the firm, or whom the advisory firm reasonably believes immediately prior to entering into the advisory contract have a net worth in excess of $1 million. 17 CFR 275.203A–3(a)(3)(i). (The Commission is adopting changes to the criteria for determining excepted persons. *See infra* section II.B.2 of this Release.) The Commission also excluded from the term ''investment adviser representative'' those supervised persons who do not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser or who provide only impersonal investment advice. Rule 203A–3(a)(2)(17 CFR 275.203A–3(a)(2)).

[24] 17 CFR 275.203A–3(a).

[25] Implementing Release, *supra* note 5, at nn.113–117 and accompanying text.

[26] Proposing Release, *supra* note 8, at section II.B.1.

whom the supervised person works or of a business or institutional client of the investment adviser for whom the supervised person works; (2) relatives, spouses, or relatives of spouses of such partners, officers, or directors; or (3) relatives, spouses, or relatives of spouses of the supervised person (''Alternative II'').

Three commenters supported Alternative I, none favored Alternative II, and three recommended combining Alternatives I and II. The commenters favoring Alternative I praised it as a simple and straightforward method of permitting supervised persons with a few institutional clients to accept a small number of accommodation clients without being subject to state registration or qualification requirements. NASAA supported Alternative I because it believes that the benefits of a bright line test outweigh the concern that the five natural person clients may not necessarily be limited to those clients who the supervised person advises on an accommodation basis.[27] Several commenters acknowledged that Alternative II would more closely tie the accommodation client provision to the purpose for which it was adopted, but believe it is too complicated. These commenters were concerned with the problems that advisory firms may have in monitoring the relationships of the accommodation clients and in adopting costly and complex compliance systems. The Commission agrees that Alternative I has many advantages over Alternative II and is adopting it, as proposed.[28]

Three commenters recommended combining aspects of Alternative I and Alternative II in ways that would expand the accommodation client provision to allow supervised persons to have a defined group of accommodation clients *in addition* to a group of natural persons (up to ten percent of the supervised person's clients) who have no relationship to the supervised persons. In the Proposing Release, the Commission, in response to a similar proposal, explained that it wanted to limit the provision to clients who are or may reasonably be presumed to be accommodation clients.[29] The Commission believes that combining the two alternatives would expand the accommodation client provision beyond the purpose for which it was adopted.

2. High Net Worth Clients and Other Excepted Persons

Under the current rule, certain ''high net worth'' individuals are not treated as retail clients; they are considered ''excepted persons'' for purposes of the definition of investment adviser representative and thus are not counted towards the ten percent allowance.[30] The criteria for determining which clients are excepted persons are based on the criteria in rule 205–3 under the Advisers Act, which permits advisers to enter into performance fee contracts with certain clients.[31] The Commission has revised the criteria to reflect the effects of inflation since the rule was adopted in 1985 and to include qualified purchasers and certain knowledgeable employees of the investment adviser. [32]

The Commission is adopting, as proposed, an amendment to the definition of investment adviser representative to treat ''qualified clients'' under rule 205–3 as excepted persons.[33] As a result, the following clients would not be counted towards the ten percent allowance: (1) Clients who immediately after entering into the investment advisory contract have at least $750,000 under management with the investment adviser; [34] (2) clients whom the investment adviser reasonably believes, immediately prior to entering into the investment advisory contract, either have a net worth of more than $1,500,000 at the time the contract is entered into [35] or are qualified purchasers as defined in section 2(a)(51)(A) of the Investment Company Act [36] at the time the contract is entered into; and (3) executive officers, directors, trustees, general partners, or persons serving in a similar capacity, of the investment adviser, as well as certain other employees of the adviser who participate in investment activities and have performed such functions for at least 12 months.[37]

As several commenters pointed out, increasing the threshold levels for determining high net worth clients may result in some supervised persons being subject to state licensing requirements to which they were not previously subject. The Commission has decided not to require compliance with the amendments to rule 203A–3(a)(3)(i) until December 31, 1998, to provide supervised persons who are affected by this change with sufficient time to prepare for and pass state qualification examinations.[38]

C. Other Amendments

The Commission is adopting, in addition to the rule amendments discussed above, several technical and clarifying amendments to the rules implementing the Coordination Act. Amended rule 203A–2(b)(3) permits investment advisers relying on the pension consultant exemption from the prohibition on Commission registration to determine the aggregate value of plan assets during a 12-month period ending 90 days before the investment adviser files Schedule I to Form ADV.[39] The Commission is amending rule 206(4)–3(a)(1)(ii)(D) [40] to cross-reference to section 203(e)(4),[41] and amending Instructions 5 and 7 to Schedule I for

[27] NASAA recommended a slight modification to Alternative I. In the Proposing Release, the Commission acknowledged that the disadvantage to Alternative I was that the five natural person minimum could include natural persons who have no relationship to the investment adviser or its institutional or business clients. Proposing Release, *supra* note 8, at section II.B.1. NASAA, addressing this concern, suggested that a supervised person be permitted to claim the five client exemption only if he has at least one client who is either an excepted person or non-natural person and cannot otherwise claim the ten percent allowance. The Commission is not adopting this proposal because it is concerned that this formula would make the provision too complicated.

[28] *See* Appendix C for examples that illustrate the application of rule 203A–3. The Commission believes that amending the definition of investment adviser representative to allow for five natural person clients would not affect many supervised persons. As the Commission noted in the Proposing Release, many states do not require supervised persons to register in the state until they have more than five clients in the respective state. Proposing Release, *supra* note 8, at n.27.

[29] *Id.* at n.28.

[30] Rule 203A–3(a)(3)(i).

[31] 17 CFR 275.205–3.

[32] *See* Exemption to Allow Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) (''Performance Fee Release'').

[33] Amended rule 203A–3(a)(3)(i) (17 CFR 275.203A–3(a)(3)(i)).

[34] This amount represents an increase from $500,000 under management.

[35] This amount represents an increase from $1,000,000 net worth.

[36] 15 U.S.C. 80a–2(a)(51)(A).

[37] The term ''qualified client'' does not include employees performing solely clerical, secretarial or administrative functions on behalf of the investment adviser.

[38] Amendments to rule 203A–3(a)(3)(i) would immediately change the state licensing obligations of only those supervised persons, a sufficient number of whose clients would no longer be considered ''high net worth'' clients under the new threshold levels. The other amendments to the rule (*i.e.*, acceptance of qualified purchasers and knowledgeable employees as clients) would not subject supervised persons to new state licensing obligations. Therefore, the Commission will not require compliance with amendments to rule 203A–3(a)(3)(i) to the extent that the increase in the threshold levels would obligate a supervised person to register with a state until December 31, 1998; supervised persons, however, may choose to comply with the other amendments upon the effective date of the amendments.

[39] 17 CFR 275.203A–2(b)(3). Under the current rule, investment advisers relying on the pension consultant exemption are required to value plan assets as of the date during the investment adviser's most recent *fiscal year* that the investment adviser was last employed or retained by contract to provide investment advice to the plan with respect to those assets.

[40] 17 CFR 275.206(4)–3(a)(1)(ii)(D).

[41] 15 U.S.C. 80b–3(e)(4).

clarification.[42] Rule 203A–5,[43] Form ADV–T,[44] and Instruction 8 to Schedule I to Form ADV are withdrawn. The Commission is amending Items 18 and 19 to Part I of Form ADV to eliminate an erroneous instruction. Finally, the Commission is revising the introductory language to Schedule G to Form ADV to remove an unnecessary reference to Form ADV–S, which has been eliminated.[45]

D. Investment Advisers With Principal Offices and Places of Business in Colorado or Iowa

Under section 203A(a)(1) of the Advisers Act, the Commission retains regulatory responsibility for an adviser with a principal office and place of business in a state that has not enacted an investment adviser statute.[46] Since the implementing rules were adopted and the publication of the Proposing Release, Colorado and Iowa have enacted investment adviser statutes, which become effective on January 1, 1999. As a result, an adviser that has its principal office and place of business in Colorado or Iowa will be prohibited from registering with the Commission after January 1, 1999, unless it has $25 million of assets under management, is an adviser to a registered investment company, or qualifies for one of the exemptions in rule 203A–2. The Commission is revising Schedule I and Instructions to Schedule I to accommodate and explain these changes.[47]

Commission-registered advisers that have their principal offices and places of business in Colorado or Iowa and are no longer eligible for Commission registration after January 1, 1999, must indicate on their annual amendment to Form ADV revising Schedule I that they are no longer eligible for Commission registration.[48] Advisers withdrawing their Commission registration must register, if required, with their appropriate state securities authorities.

III. Cost-Benefit Analysis

The multi-state investment adviser exemption will permit investment advisers required to register with 30 or more states to register with the Commission even though they do not otherwise meet the criteria for Commission registration.[49] The Commission has limited data on the number of investment advisers that will qualify for the multi-state investment adviser exemption.[50] Generally, most advisers that have clients in as many as 30 states have assets under management of more than $25 million. Thus, the Commission estimates that as few as ten investment advisers will qualify for the multi-state exemption each year.[51] The Commission requested comment on the number of investment advisers that would qualify for this exemption but received none. The Commission believes that the multi-state exemption generally will not impose significant additional costs on investment advisers but will result in a net savings for certain advisers when compared with the costs of complying with multiple state registration requirements.

The multi-state exemption will benefit investment advisers who register with the Commission relying on the exemption by saving those advisers the costs of complying with the regulations of 30 different states. For the purposes of this analysis, the Commission estimates that it costs each adviser $30,000 to comply with state registration requirements.[52] Therefore, the cost savings for the ten advisers expected to be eligible for the multi-state exemption may be as much as $300,000 annually. The Commission requested comment on the reasonableness of the savings estimates but did not receive any comments.

The benefits of the multi-state exemption will include savings for investment advisers of the costs associated with being examined by 30 different state regulators. State regulators also would save the expense of examining these investment advisers. In response to the Commission's request for comment on the costs of examining investment advisers and the frequency of adviser examinations, the Department of Banking and Finance of Nebraska stated that it would save between $200 and $1,000 per examination depending on the size of the advisory firm.[53] In addition, the multi-state exemption will provide unquantifiable regulatory benefits to advisers that will be regulated by one entity instead of 30 separate entities.

The multi-state investment adviser exemption will impose certain costs on advisers relying on the exemption. Investment advisers relying on the exemption will be required to attach a representation to Schedule I initially when registering, and annually when amending Form ADV, about the number of states in which the adviser would be required to register. The investment adviser also will be required to maintain a record of the states in which it believes, but for the exemption, it would be required to register. The Commission estimates that the cost per year to each adviser will be approximately $24,000 for a total of $240,000 for the ten investment advisers expected to be eligible for the exemption.[54] The

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[42] The Commission also is deleting the unnecessary reference to the date of the valuation of the assets under management in Part II of Schedule I.

[43] 17 CFR 275.203A–5.

[44] 17 CFR 279.3.

[45] *See* Implementing Release, *supra* note 5, at section I.1.

[46] 15 U.S.C. 80b–3a(a)(1).

[47] The Commission also is revising Schedule I to reflect that the U.S. Virgin Islands does not have an investment adviser statute.

[48] Advisers that are no longer eligible for Commission registration must check box (b) of Part I of Schedule I to Form ADV and withdraw their registration using Form ADV–W within the 90-day grace period provided by rule 203A–1(c) (17 CFR 275.203A–1(c)). Advisers that are no longer eligible for Commission registration and do not voluntarily withdraw their registration will be subject to a cancellation proceeding under section 203(h). *See generally* Implementing Release, *supra* note 5. An adviser in Colorado or Iowa that is no longer eligible for Commission registration may withdraw from Commission registration as early as January 1, 1999, or as late as 180 days after the end of the adviser's fiscal year.

[49] *See supra* section II.A of this Release.

[50] Every investment adviser applying for registration with the Commission is required to file Form ADV with the Commission and to file an amended Form ADV when information on the form has changed. Form ADV requires information about the states in which an investment adviser is registered, but does not distinguish between states in which the registration is mandatory and in which registration is voluntary. Moreover, the Commission no longer receives Form ADV information for state-registered advisers.

[51] According to information provided to the Commission on Form ADV–T, approximately 21 advisers are registered with 30 or more states but no longer are registered with the Commission as a result of the enactment of the Coordination Act. Although approximately 21 investment advisers are registered in more than 30 states, the Commission estimates that only about half of these advisers are required to register in 30 or more states. Therefore, the Commission estimates that there may be ten investment advisers that will qualify for the multi-state exemption each year.

[52] In the Cost-Benefit Analysis of Rules Implementing Amendments to the Investment Advisers Act of 1940, the Commission estimated that the cost for a mid-size adviser to comply with state-law registration requirements could be as much as $20,000. *See* Cost-Benefit Memorandum (available in File No. S7–31–96) (''Implementing Amendments Cost-Benefit Analysis''). The Commission believes that, because advisers eligible for the multi-state exemption would typically be required to register in more states (*i.e.*, in at least 30 states) than the average adviser registered with the Commission, the cost would be at least $30,000 per adviser. These dollar estimates were based on discussions with law firms that provide these kinds of services to investment advisers.

[53] Nebraska commented that, although it has not begun routine examinations of investment advisory firms, it estimates the examination of a small firm to cost between $200 and $400 and the examination of a larger firm to cost between $800 and $1,000.

[54] The Commission estimated this figure by multiplying the aggregate burden hours that are required in making a representation, which is attached to Schedule I to Form ADV (240 hours), by an average hourly compensation rate of $100. The estimation of the aggregate burden hours for complying with the requirements of the multi-state exemption is based on the Commission's Paperwork

Commission requested comment on the costs associated with the requirements of the multi-state exemption, but did not receive any empirical data concerning the costs.

As discussed above, the Commission is amending the definition of investment adviser representative to allow supervised persons who provide advice to a few institutional or business clients to have at least five natural persons as accommodation clients without being subject to state registration requirements even if they are not able to take advantage of the ten percent allowance.[55] The revised definition provides a bright-line test that should enable firms and representatives alike to determine easily whether a supervised person would be subject to state qualification requirements. The Commission also is amending the definitions of high net worth clients and other ''excepted persons,'' who are not counted towards the ten percent allowance.[56] As discussed above, the amendments raise the threshold levels for determining high net worth clients and include qualified purchasers and certain knowledgeable employees as excepted persons.

The Commission estimates that Commission-registered advisers together employ approximately 153,000 investment adviser representatives.[57] The Commission, however, has no data on the number of representatives who may be affected by the amendments. Although the Commission requested comment on the number of investment adviser representatives who would be affected by the revision of the definition, commenters did not provide any data. The Commission, therefore, is unable to quantify the total benefits and costs that may result from these amendments.

The amendments to the definitions of investment adviser representative and excepted persons who are excluded from the ten percent allowance may increase the number of supervised persons of Commission-registered advisers who are not subject to state qualification requirements. Under the amended definition of investment adviser representative, all supervised persons of Commission-registered investment advisers may provide services to five natural person clients without being subject to state qualification requirements. Moreover, the amendments to the definition of excepted persons permit supervised persons to accept qualified purchasers and certain knowledgeable employees of the investment adviser as clients without being subject to state qualification requirements. On the other hand, the number of supervised persons who are not subject to state qualification requirements may not increase substantially because many states already do not require investment adviser representatives to register with the state until they have more than five clients in the state.[58] Moreover, supervised persons must count clients who no longer qualify as high net worth under the amended criteria towards the ten percent allowance.

Although the Commission is unable to quantify the total benefits and costs relating to the adoption of the amendments, the Commission believes that the amendments generally will not impose significant costs on investment advisers and their supervised persons. Supervised persons who are no longer subject to state qualification requirements because of the revised definitions may benefit by saving the expense associated with state qualification examinations (i.e., monitoring state registration requirements and registering for state exams).[59] Moreover, because the Coordination Act preserved the authority of the states to require the payment of state filing, registration, and licensing fees, there will be no loss to the states of fees collected.

The costs associated with revising the definitions, which may result in certain supervised persons no longer being subject to state qualification requirements, include the fees for state examinations of investment advisers that will not be collected by the National Association of Securities Dealers Regulation, Inc. (''NASDR'') and NASAA.[60] The Commission requested comment on the costs incurred by investment advisers and their supervised persons and on the examination fees collected by the NASDR and NASAA but did not receive any comments on these issues.

The clarifying amendments that the Commission is adopting, which are described above, will eliminate any confusion created by the language of the rules and instructions.[61] The Commission believes that these amendments will not impose any additional costs on investment advisers.

Finally, the Commission believes that the amendments to Schedule I to Form ADV to reflect the enactment of investment adviser statutes in Colorado and Iowa will not impose significant costs on investment advisers. The Commission estimates that approximately 650 advisers that have their principal offices and places of business in Colorado or Iowa will no longer be eligible for Commission registration after January 1, 1999.[62]

The benefits of amending Schedule I to Form ADV to reflect the enactment of investment adviser statutes include: (1) Implementing the Coordination Act by prohibiting Commission registration of advisers that have their principal offices and places of business in a state that regulates investment advisers; and (2) preventing the preemption of state law in Colorado and Iowa for those advisers that should be regulated by the states. These benefits are substantial, but are not quantifiable.

Advisers that are no longer eligible for Commission registration will incur some additional costs in complying with state registration requirements once they are no longer registered with the Commission and state law is not preempted.[63] These advisers may be required to register and to comply with requirements of other states in which they transact business if they have a place of business in the state or have six or more clients who are residents of that state.

IV. Paperwork Reduction Act

As set forth in the Proposing Release, certain provisions of the rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[64] Therefore, the collection of information requirements, titled ''Form ADV'' and ''Schedule I to Form ADV'' contained in the rule

Reduction Act Submission. *See* Proposing Release, *supra* note 8, at section IV.

[55] *See supra* section II.B.1 of this Release.

[56] *See supra* section II.B.2 of this Release.

[57] This estimate of the number of investment adviser representatives was made for the purposes of the Implementing Amendments Cost-Benefit Analysis. *See* Cost-Benefit Memorandum, *supra* note 52.

[58] *See,* e.g., Unif. Sec. Act section 201(c) (1997); Burns Ind. Code Ann. section 23–2–1–8(c)(3) (1997); Md. Code Ann., Corps. & Ass'ns section 11–401(b)(3)(ii) (1997); Utah Code Ann. section 61–1–3(3)(c) (1997).

[59] The Commission estimated the following costs: $96 to take an exam, $850 for examination preparation, and $150 annually per investment adviser representative to monitor state registration requirements. *See* Cost-Benefit Memorandum, *supra* note 52.

[60] The Commission estimated that the revenue from examination fees would be $32 per examination. *Id.*

[61] *See supra* section II.C of this Release.

[62] This number is based on information provided to the Commission on Form ADV–T.

[63] Because the Coordination Act preserved the authority of the states to require the payment of state filing, registration, and licensing fees, advisers in Colorado or Iowa will be required to pay fees regardless of whether they are registered with the Commission or with the state in which they have their principal offices and places of business.

[64] 44 U.S.C. 3501–3520.

amendments were submitted to the Office of Management and Budget (''OMB'') for review pursuant to section 3507(d) of the PRA and 5 CFR 1320.11. The Commission did not receive any comments from the public in response to its request for comments in the Paperwork Reduction Act section of the Proposing Release. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. OMB approved the PRA request and assigned control numbers 3235–0049 to Form ADV and 3235–0490 to Schedule I to Form ADV, each with an expiration date of February 28, 2001.

Form ADV is required by rule 203–1 (17 CFR 275.203–1) to be filed by every adviser applying for registration with the Commission as an investment adviser. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. The Commission is not amending rule 203–1, but is amending Schedule I to Form ADV, which is referenced in rule 279.1 (discussed below as a related, though separate, collection of information).

Rule 204–1 (17 CFR 275.204–1) describes the circumstances requiring the filing of an amended Form ADV. Registrants must file an amended Form ADV when information on the initial Form ADV has changed, either at the end of the fiscal year or promptly for certain material changes. In addition, rule 204–1 requires an investment adviser to file the cover page of Form ADV (along with a Schedule I to Form ADV) annually within 90 days after the end of the investment adviser's fiscal year regardless of whether other changes have taken place during the year. The Commission is not amending rule 204–1. The collection of information required by Form ADV is mandatory, and responses are not kept confidential.

The Commission has revised its estimate of the burden hours required by Form ADV as a result of a change in the number of estimated respondents. The total burden hours imposed by Form ADV are estimated to be 19,448.42.

Schedule I to Form ADV requires an investment adviser to declare whether it is eligible for Commission registration. Schedule I, as part of Form ADV, is required to be filed with an investment adviser's initial application on Form ADV. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. The Commission is not amending rule 203–1, but is amending Schedule I to Form ADV, which is referenced in rule 279.1. The collection of the information required by Schedule I to Form ADV is mandatory, and responses are not kept confidential.

Schedule I to Form ADV permits the Commission to determine whether investment advisers meet the eligibility criteria for Commission registration set out in section 203A and the rules under the section, both at the time of initial registration and annually thereafter. Schedule I to Form ADV also will be used to determine the eligibility of investment advisers that rely on the multi-state exemption under rule 203A–2(e) and to implement that exemption.

The Commission has revised its estimate of the burden hours required by Schedule I to Form ADV as a result of a change in the number of estimated respondents and a program change (*i.e.*, requirements for advisers relying on the new multi-state exemption). The total burden hours imposed by Schedule I to Form ADV are estimated to be 9,480. The rule amendments, as adopted, do not impose a greater paperwork burden upon respondents than that estimated and described in the Proposing Release.

V. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis (''IRFA'') was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 relating to amendments to rules 203A–2, 203A–3, and 206(4)–3, Form ADV, Schedule G to Form ADV, and Schedule I to Form ADV, and the withdrawal of rule 203A–5 and Form ADV–T under the Advisers Act. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the rule amendments. The amendments, as adopted, refine rules implementing the Coordination Act. The amendments (1) exempt multi-state investment advisers from the prohibition on Commission registration; (2) revise the definition of investment adviser representative; (3) clarify other implementing rules; and (4) amend Schedule I to Form ADV to reflect that Colorado and Iowa have recently enacted investment adviser statutes. In addition, the Commission is withdrawing rule 203A–5 and Form ADV–T to eliminate the transition rule and form that are no longer necessary.

The FRFA also provides a description of and an estimate of the number of small entities to which the rule amendments will apply. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity (i) if it manages assets of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year or (ii) if it renders other advisory services, has $50,000 or less in assets related to its advisory business.[65] The Commission estimates that up to 17,650 advisers are small entities and that approximately 850 investment advisers that are registered with the Commission are small entities.[66]

The rule amendments will have some effect on small entities. The multi-state rule should affect only a few small entities because the Commission estimates that only ten investment advisers can avail themselves of the multi-state exemption annually. The Commission believes that the effect on small entities from the amended definition of investment adviser representative may be significant; the Commission estimates that the number of supervised persons who are not investment adviser representatives and are thus not subject to state qualification requirements will increase slightly. The clarifying amendments should not have a significant effect on small entities because the amendments eliminate any confusion the language of the rules or the instructions to forms may have created and do not impose any additional burden on investment advisers. The withdrawal of rule 203A–5 and Form ADV–T should not affect any small entities because there should not be any advisers currently filing Form ADV–T. Finally, the enactment of investment adviser statutes by Colorado or Iowa (and the resulting amendments to Schedule I to Form ADV to reflect these changes) may have a significant effect on small entities. The Commission estimates that approximately 650 investment advisers that have their principal offices and places of business in Colorado or Iowa will no longer be eligible for Commission registration after January 1, 1999.

[65] Rule 275.0–7 (17 CFR 275.0–7) The Commission has revised the definition of ''small entity,'' effective July 30, 1998. *See* Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisors Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Release No. 33–7548, 34–40122, IC–23272, and IA–1727 (June 24, 1998) (63 FR 35508 (June 30, 1998)). Because the IRFA concerning the proposed amendments was prepared under the old definition, that definition applies to the Commission's preparation of the FRFA concerning these amendments *Id.* at n. 32.

[66] These estimates of the number of small entities were made for purposes of the Final Regulatory Flexibility Analysis for the rules implementing the Coordination Act. *See* Implementing Release, *supra* note 5, at nn. 189–190 and accompanying text.

Finally, the FRFA states that, in adopting the amendments, the Commission considered (a) the establishment of differing compliance requirements that take into account the resources available to small entities; (b) simplification of the rule's requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the rules for small entities. The FRFA states that the Commission concluded that different standards for small entities are not necessary or appropriate.

The FRFA is available for public inspection in File No. S7–28–97, and a copy may be obtained by contacting Carolyn-Gail Gilheany, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 5–6, Washington, D.C. 20549.

VI. Statutory Authority

The Commission is adopting amendments to rule 203A–2 under the authority set out in section 203A(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(c)).

The Commission is adopting amendments to rule 203A–3 under the authority set out in sections 202(a)(17) and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17), 80b–11(a)).

The Commission is adopting amendments to rule 206(4)–3 under the authority set out in sections 204, 206, and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–6, 80b–11).

The Commission is withdrawing rule 203A–5 under the authority set out in sections 204 and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–11(a)).

The Commission is adopting amendments to Form ADV, Schedule G to Form ADV, and Schedule I to Form ADV under the authority set out in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4).

The Commission is removing and reserving rule 279.3 and removing Form ADV–T under the authority set out in sections 204 and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b11(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 out 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 authority citation for Part 275 continues to read in part as follows:

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

* * * * *

2. Section 275.203A–2 is amended by revising the introductory texts of § 275.203A–2 and paragraph (b), revising paragraphs (b)(1) and (b)(3) and adding paragraph (e) to read as follows:

§ 275.203A–2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) does not apply to:

* * * * *

(b) *Pension Consultants.* (1) An investment adviser that is a ''pension consultant,'' as defined in this section, with respect to assets of plans having an aggregate value of at least $50,000,000.

* * * * *

(3) In determining the aggregate value of assets of plans, include only that portion of a plan's assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets). Determine the aggregate value of assets by cumulating the value of assets of plans with respect to which the investment adviser was last employed or retained by contract to provide investment advice during a 12-month period ended within 90 days of filing Schedule I to Form ADV (17 CFR 279.1).

* * * * *

(e) *Multi-state investment advisers.* An investment adviser that:

(1) Upon submission of its application for registration with the Commission, is required by the laws of 30 or more States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and thereafter would, but for this section, be required by the laws of at least 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States;

(2) Attaches a representation to Schedule I to Form ADV (17 CFR 279.1) that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States or, in the case of an amendment to Form ADV revising Schedule I to Form ADV, it would be required by the laws of at least 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, within 90 days prior to the date of filing Schedule I;

(3) Includes on Schedule E to Form ADV (17 CFR 279.1) an undertaking to withdraw from registration with the Commission if an amendment to Form ADV revising Schedule I to Form ADV indicates that the investment adviser would be required by the laws of fewer than 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and, if an amendment to Form ADV revising Schedule I indicates that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) from registering with the Commission, files a completed Form ADV–W (17 CFR 279.2) within 90 days from the date the investment adviser was required by § 275.204–1(a) to file the amendment to Form ADV revising Schedule I, whereby the investment adviser withdraws from registration with the Commission; and

(4) Maintains in an easily accessible place a record of the States in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Schedule I to Form ADV that includes a representation that is based on such record.

3. In § 275.203A–3 the introductory text and paragraph (a) are revised to read as follows:

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3a) and the rules thereunder:

(a)(1) *Investment adviser representative.* ''Investment adviser representative'' of an investment adviser means a supervised person of the investment adviser:

(i) Who has more than five clients who are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section); and

(ii) More than ten percent of whose clients are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section).

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) ''Excepted person'' means a natural person who is a qualified client as described in § 275.205–3(d)(1).

(ii) ''Impersonal investment advice'' means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of ''client'' in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

* * * * *

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

5. In § 275.206(4)–3 paragraph (a)(1)(ii)(D) is amended by revising the cite ''203(e)(3)'' to read ''203(e)(4)''.

§ 275.203A–1 and 275.203A–2 [Amended]

6. In 17 CFR part 275 remove ''(15 U.S.C. 80b–3A(a))'' and add, in its place, ''(15 U.S.C. 80b–3a(a))'' in the following places:

a. Section 275.203A–1(b)(2), (c), and (d); and

b. Section 275.203A–2(d)(2) and (d)(3).

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

7. 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.*

8. By removing the last sentence in Items 18 and 19 to Part I of Form ADV (referenced in § 279.1).

Note: The text of Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulations.

9. By revising Schedule G to Form ADV (referenced in § 279.1) to read as follows:

Note: The text of Schedule G to Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulations. Schedule G is attached as Appendix B.

10. By revising Schedule I to Form ADV (referenced in § 279.1) to read as follows:

Note: The text of Schedule I to Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulations. Schedule I is attached as Appendix A.

11. Section 279.3 is removed and reserved.

12. Form ADV–T is removed.

Note: Form ADV–T does not appear in the Code of Federal Regulations.

By the Commission.

Dated: July 17, 1998.

Jonathan G. Katz,

Secretary.

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APPENDIX A [NOTE: The text of Schedule I does not appear in the Code of Federal Regulations.]

SCHEDULE I

Schedule for Declaring Eligibility for SEC Registration

OMB APPROVAL
OMB Number: 3235-0490
Expires: February 28, 2001
Estimated average burden
hours per response: 1.1618 hours

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part I Eligibility for SEC Registration

Section 203(h) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to cancel or deny the registration of any investment adviser that does not meet the criteria for SEC registration set forth in section 203A of the Advisers Act. This Part I requires applicant to declare whether it is eligible, or continues to be eligible, for Commission registration.

Check either (a) or (b):

(a) ☐ Applicant is eligible (or will remain eligible) for SEC registration.

For an applicant to be eligible (or remain eligible) for SEC registration, applicant must respond affirmatively (by checking the appropriate box or boxes) to at least one of the items (i) through (x) below:

Applicant:

(i) ☐ has assets under management of $25 million (in U.S. dollars) or more;

Report assets under management in Part II if "assets under management" is the sole basis of applicant's eligibility for SEC registration (i.e., this item (i) is checked, and none of items (ii) through (x) below is checked).

(ii) ☐ has its principal office and place of business in Colorado,* Iowa,* Ohio, U.S. Virgin Islands, or Wyoming (*See Instruction 3*);

(iii) ☐ has its principal office and place of business outside the United States (*See Instruction 3*);

(iv) ☐ is an investment adviser to an investment company registered under the Investment Company Act of 1940 (*See Instruction 4*);

(v) ☐ is a nationally recognized statistical rating organization;

(vi) ☐ is a pension consultant that qualifies for the exemption in rule 203A-2(b) (*See Instruction 5(a)*);

(vii) ☐ is an investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to maintain its registration with the Commission, and whose principal office and place of business is the same as the eligible investment adviser (*See Instruction 5(b)*);

(viii) ☐ is a newly formed investment adviser relying on rule 203A-2(d) (*See Instruction 5(c)*);

(ix) ☐ has received an order of the Commission exempting applicant from the prohibition on registration with the Commission;
Application number: 803- _____
Date of Commission's order: _____

(x) ☐ is a multi-state investment adviser relying on rule 203A-2(e) (*See Instruction 5(d)*).

(b) ☐ Registrant is no longer eligible for SEC registration. (*See Instruction 6*)

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part II Assets Under Management

Report assets under management if required by Part I (*i.e.*, if item I(a)(i) is checked yes "(x)" and is the sole basis for applicant's eligibility for SEC registration).

State the amount of applicant's assets under management (in U.S. dollars): (*See Instruction 7*)

$_____.00 (in U.S. dollars)

Applicants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statement of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact that is required to be stated therein.

SCHEDULE I INSTRUCTIONS

Instruction 1. ***General Instructions***

(a) ***SEC's Collection of Information***. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Schedule from applicants. *See* 15 U.S.C. §§ 80b-3(c)(1) and 80b-4. Filing of this Schedule is mandatory. The principal purpose of this collection of information is to enable the Commission to determine which investment advisers are eligible to maintain their registration with the Commission. The Commission will maintain files of the information on this Schedule and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of this Schedule, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 FR 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

(b) ***For Further Information***. Additional information about the rules referred to in this Schedule is found in the Commission's adopting release, *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 1633 (May 15, 1997).

Instruction 2. ***Principal Place of Business***

Applicant's principal place of business reported in Form ADV, Part I, Item 2.A. is the applicant's principal office and place of business, *i.e.*, the executive office from which the officers, partners, or managers of the applicant direct, control, and coordinate applicant's activities. *See* rule 203A-3(c).

Instruction 3. ***Advisers in Colorado,* Iowa,* Ohio, U.S. Virgin Islands, or Wyoming; Foreign Advisers***

Under the Advisers Act, an applicant whose principal office and place of business (*see* Instruction 2) is in a State that does not register investment advisers is required to register with the Commission, even if none of the criteria for SEC registration (*e.g.*, $25 million of assets under management) is met. Currently, these States are Colorado,* Iowa,* Ohio, U.S. Virgin Islands, and Wyoming. Applicants that have their principal offices and places of business in one of these States should check the box in item (a)(ii) of Part I.

* Colorado and Iowa have enacted investment adviser statutes, which become effective on January 1, 1999. After that date, advisers that have their principal offices and places of business in Colorado or Iowa will be prohibited from registering with the Commission, unless they have $25 million or more of assets under management, are advisers to a registered investment company, qualify for one of the exemptions in rule 203A-2, or has received an order of the Commission exempting them from the prohibition on registration. **After January 1, 1999, advisers that have their principal offices and places of business in Colorado or Iowa cannot check box (a)(ii) of Part I and must check box (b) of Part I, unless they are eligible for Commission registration under another criterion. Advisers that check box (b) are no longer eligible for Commission registration and must withdraw from Commission registration using Form ADV-W.**

An applicant whose principal office and place of business is located in a country other than the United States (*i.e.*, not in the United States, the District of Columbia, Puerto Rico, or any other possession of the United States) also is required to register with the Commission. Such an applicant should check the box in item (a)(iii) of Part I.

Instruction 4. ***Advisers to Investment Companies***

An applicant should not check item (a)(iv) of Part I unless applicant currently provides advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940. The investment company must be operational, *i.e.*, have assets and shareholders (other than just the organizing shareholders).

Instruction 5. ***Exemptions***

(a) ***Pension Consultants***. An applicant that provides investment advice to employee benefit plans, governmental plans, or church plans with respect to assets having an aggregate value of $50 million or more during the 12-month period ended within 90 days of filing this Schedule may register with the Commission. An investment adviser seeking to rely on this pension consultant exemption must aggregate: (i) the value of assets for which it provided advisory services at the end of the 12-month period, and (ii) the value of any other assets for which it provided advisory services at the end of its employment or contract (if terminated before the end of the 12-month period). *See* rule 203A-2(b).

(b) ***Affiliated Advisers***. An applicant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission ("eligible adviser") is itself eligible to register with the Commission if the principal office and place of business of the applicant is the same as that of the eligible adviser. *See* rule 203A-2(c).

(c) ***Newly Formed Advisers***. A newly formed investment adviser may register with the Commission at the time of its formation if the adviser has a reasonable expectation that within 120 days of registration it will become eligible for Commission registration. At the end of the 120-day period, the adviser is required to file an amended Schedule I. If the investment adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser is required to file a Form ADV-W concurrently with the Schedule I, thereby withdrawing from registration with the Commission. An applicant registering with the Commission in reliance on this exemption must include on Schedule E of Form ADV an undertaking to withdraw from registration if, at the end of the 120-day period, the investment adviser would be prohibited from Commission registration. *See* rule 203A-2(d).

(d) ***Multi-State Advisers***. An investment adviser may register with the Commission if it is required to register as an investment adviser with the securities authorities of 30 or more States. To rely on this exemption, an applicant must (i) attach to this Schedule a representation that it has reviewed the applicable State and federal laws and has concluded that it must register as an investment adviser with the securities authorities of at least 30 States within 90 days prior to the date of filing this Schedule, and (ii) include on Schedule E to Form ADV an undertaking to withdraw from Commission registration if it would no longer be required to register in at least 25 States when it files its annual amendment to Form ADV revising this Schedule. Each year (and for so long as the investment adviser continues to rely on the multi-state investment adviser exemption), when the adviser updates its Schedule I, it must attach a new representation that it has concluded that, but for the exemption, it would be required to register with the securities authorities of at least 25 States within 90 days prior to the date of filing Schedule I. In addition, each time the adviser makes such a representation, the adviser must create and maintain a list of the States in which, but for the exemption, it would be required to register. This list must be maintained in an easily accessible place for a period of not less than five years from the date each representation is filed as an attachment to this Schedule. *See* rule 203A-2(e).

Instruction 6. ***Part I, Item (b)***

If item (b) of Part I is checked, registrant's investment adviser registration with the SEC must be withdrawn within 90 days after the date this Schedule I was required by rule 204-1(a) to have been filed with the Commission. Thus, registrant's registration must be withdrawn no later than 180 days after the end of its fiscal year. If registrant's registration is not withdrawn within this time period, registrant will be subject to having its registration cancelled pursuant to section 203(h) of the Advisers Act. *See* rule 203A-1(c).

Instruction 7. ***Determining Assets Under Management***

Not all applicants are required to provide the amount of their assets under management. An applicant must report its assets under management in Part II only if item I(a)(i) is checked yes "(x)" and the amount of assets applicant has under management is the sole basis for applicant's eligibility for SEC registration (*i.e*, applicant has not checked any of items I(a)(ii) through (x)).

In determining the applicant's assets under management, include the **"securities portfolios"** (or portions of those portfolios) for which applicant provides **"continuous and regular supervisory or management services"** as of the date of filing this Schedule.

(a) ***Securities Portfolios.*** An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purpose of this 50% test, applicant may treat cash and cash equivalents (*i.e.*, bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities.

Applicants may include securities portfolios that are: (i) family or proprietary accounts of the applicant (unless applicant is a sole proprietor, in which case the personal assets of the sole proprietor must be excluded); (ii) accounts for which applicant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) ***Value of Portfolio.*** Include the entire value of each securities portfolio (or portion of the portfolio) for which applicant provides "continuous and regular supervisory or management services." If applicant provides continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only the portion of the securities portfolio that receives such services. Exclude, for example, a portion of an account:

(1) under management by another person; or

(2) that consists of real estate or businesses the operations of which are "managed" on behalf of a client but not as an investment.

No deduction is required for securities purchased on margin.

(c) ***Continuous and Regular Supervisory or Management Services.***

General Criteria. An applicant provides continuous and regular supervisory or management services with respect to a securities portfolio if the applicant either --

(1) has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or

(2) does not have discretionary authority over the account, but has an ongoing responsibility to select or make recommendations, based 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, is responsible for arranging or effecting the purchase or sale.

Factors. Applicants should consider the following factors in evaluating whether continuous and regular supervisory or management services are being provided.

(1) ***Terms of the advisory contract.*** A provision in an advisory contract by which the applicant agrees to provide ongoing management services suggests that the account receives such services. Other provisions in the contract, or the actual management by the applicant, however, may rebut such a suggestion.

(2) ***Form of compensation.*** A form of compensation based on the average value of assets under management over a specified period of time would suggest that the applicant provides continuous and regular supervisory or management services. On the other hand, a form of compensation based upon time the applicant spends with a client during a client visit would suggest otherwise. A retainer based upon a percentage of assets covered by a financial plan would not suggest that the applicant provides continuous and regular supervisory or management services.

(3) ***The management practice of the applicant.*** The extent to which the applicant is actively managing the assets or providing advice bears on whether the services are continuous and regular supervisory or management services. However, infrequent trades (*e.g.*, based on a "buy and hold" strategy) should not alone form the basis for a determination that the services are not provided on a continuous and regular basis.

Examples. To assist applicants, the Commission is providing examples of accounts that may receive continuous and regular supervisory or management services, based upon the criteria and factors discussed above. These examples are not exclusive.

Accounts that may receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant allocates assets of a client among mutual funds (even if it does so without a grant of discretionary authority, but only if the general criteria for non-discretionary accounts is satisfied and the factors suggest that the account receives continuous and regular supervisory or management services); and

(2) Accounts for which the applicant allocates assets among other managers -- but only under a grant of discretionary authority by which it may hire and fire managers and reallocate assets among them.

Accounts that do not receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant provides market timing recommendations (to buy or sell) but has no ongoing management responsibilities;

(2) Accounts for which the applicant provides only impersonal advice, *e.g.*, market newsletters;

(3) Accounts for which the applicant provides an initial asset allocation, without continuous and regular monitoring and reallocation; and

(4) Accounts for which the applicant provides advice only on an intermittent or periodic basis, upon the request of the client, or in response to some market event, *e.g.*, an account that is reviewed and adjusted on a quarterly basis.

(d) ***Value of Assets Under Management.*** Calculate the total amount of applicant's assets under management by including the value, as determined within 90 days prior to the date of filing this Schedule, of securities portfolios (or portions of those portfolios) for which applicant provides continuous and regular supervisory or management services as of the date of filing this Schedule. Current market value should be determined using the same method as that used to determine the account value reported to clients or fees for investment advisory services.

(e) ***Example.*** To assist applicants, the Commission is providing an example of the method of determining whether a client account may be included as "assets under management."

Example:

A client's portfolio consists of the following:

$ 6,000,000	stocks and bonds
$ 1,000,000	cash and cash equivalents
$ 3,000,000	non-securities (collectibles, commodities, real estate, etc.)
$10,000,000	Total Assets

First, is the account a "securities portfolio?" The account is a securities portfolio because securities as well as cash and cash equivalents (which the applicant has chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). *(See Instruction 7(a))*

Second, does the account receive "continuous and regular supervisory or management services?" The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. *(See Instruction 7(c))*

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the investment adviser's total assets under management.

APPENDIX B [NOTE: The text of Schedule G does not appear in the Code of Federal Regulations.]

Schedule G of Form ADV Balance Sheet	Applicant:	SEC File Number: 801-	Date:

(Answers in Response to Form ADV Part II Item 14.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.:

Instructions

1. The balance sheet must be:

   A. Prepared in accordance with generally accepted accounting principles

   B. Audited by an independent public accountant

   C. Accompanied by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

2. Securities included at cost should show their market or fair value parenthetically.

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of Regulation S-X (17 CFR 210.2-01 et. seq.).

4. Sole proprietor investment advisers:

   A. Must show investment advisory business assets and liabilities separate from other business and personal assets and liabilities

   B. May aggregate other business and personal assets and liabilities unless there is an asset deficiency in the total financial position.

Complete amended pages in full, circle amended items and file with execution page (page 1).

[NOTE: This appendix to the preamble will not appear in the Code of Federal Regulations]

Appendix C - Examples Illustrating the Application of Rule 203A-3(a)(1)

A supervised person is not considered an investment adviser representative under the rule (and thus not subject to state qualification requirements) if he or she has the greater of:

(1) five natural person clients[1] (“***Five Client Minimum***”) or
(2) the number of natural person clients permitted under the ten percent allowance (“***Ten Percent Allowance***”)

How many natural persons can a supervised person accept as accommodation clients without being subject to state qualification requirements in Examples 1 and 2?

EXAMPLE 1:

3	business or institutional clients
1	high net worth or knowledgeable employee clients
4	total clients of the supervised person

The supervised person may have the greater of:

Five Client Minimum: 5

or

Ten Percent Allowance: $0 \cong (4 \times 10\%)$

ANSWER: The supervised person can accept five natural persons as accommodation clients without being subject to state qualification requirements.

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[1] For the purposes of determining whether a supervised person is an investment adviser representative, a client would be considered a client of the supervised person if the supervised person has substantial responsibilities with respect to the client's account or communicates advice to the client. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)].

EXAMPLE 2:

65 business or institutional clients
5 high net worth or knowledgeable employee clients
70 total clients of the supervised person

The supervised person may have the greater of:

Five Client Minimum: 5
or
Ten Percent Allowance: 7 = (70 x 10%)

ANSWER: The supervised person can accept seven natural persons as accommodation clients without being subject to state qualification requirements.

How many natural persons can the supervised person in Examples 3, 4, and 5 have as accommodation clients without being subject to state qualification requirements? Is the supervised person an investment adviser representative?

EXAMPLE 3:

16 business or institutional clients
5 high net worth or knowledgeable employee clients
9 natural person clients
30 total clients of the supervised person

The supervised person may have the greater of:

Five Client Minimum: 5
or
Ten Percent Allowance: 3 = (30 x 10%)

ANSWER: This supervised person can have five natural persons as accommodation clients without being subject to state qualification requirements. Because the supervised person already has 9 natural person clients, he or she is an investment adviser representative.

EXAMPLE 4:

28 business or institutional clients
38 high net worth or knowledgeable employee clients
2 natural person clients
68 total clients of the supervised person

The supervised person may have the greater of:

Five Client Minimum: 5
or
Ten Percent Allowance: 6 ≅ (68 x 10%)*

ANSWER: This supervised person can have six natural persons as accommodation clients without being subject to state qualification requirements. Because the supervised person currently has only 2 natural person clients, he or she is not an investment adviser representative.
* The supervised person must round down the number permitted under the ten percent allowance.

EXAMPLE 5:

4 business or institutional clients
3 high net worth clients or knowledgeable employee clients
63 natural person clients
70 total clients of the supervised person

The supervised person may have the greater of:

Five Client Minimum: 5
or
Ten Percent Allowance: 7 = (70 x 10%)

ANSWER: This supervised person can have seven natural persons as accommodation clients without being subject to state qualification requirements. Because the supervised person already has 63 natural person clients, he or she is an investment adviser representative.

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