

1

SUPPORTING STATEMENT
Rule 203-3 and Form ADV-H

A. JUSTIFICATION

1. Necessity for the Information Collection

On September 12, 2000, the Securities and Exchange Commission (the “Commission”) approved final rules that required all SEC-registered investment advisers to file Part 1 of Form ADV electronically through the Investment Adviser Registration Depository (“IARD”).¹ The IARD is an Internet-based system that investment advisers access through computers in their offices, without the need for specialized software or hardware. The information investment advisers submit to the IARD is stored in a database, and the general public has Internet-access to the data. The IARD also permits investment advisers to meet Commission and state notice filing requirements electronically.

Recognizing that technological glitches occur and certain advisers may not be able to meet the electronic filing requirements, the Commission adopted rule 203-3 (17 CFR 275.203-3), which is entitled “Hardship exemptions,” along with Form ADV-H (17 CFR 279.3), under the Investment Advisers Act of 1940 (15 U.S.C. 80b). Rule 203-3 permits investment advisers to request either a temporary or continuing hardship exemption on a hard copy filing of Form ADV-H. An adviser requesting a temporary hardship is required to file Form ADV-H, and provide a brief explanation of the nature and extent of the temporary technical difficulties.² Form ADV-H requires an adviser requesting a continuing hardship

¹ Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438, Sept. 22, 2000].

² Similarly, issuers that submit electronic filings on EDGAR apply for a temporary hardship exemption on Form TH. 17 CFR 232.201. Form ADV-H is based on Form TH, which is filed by issuers relying on the temporary

exemption to indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense.³ A continuing hardship exemption is available only to an adviser that is a small entity.⁴

Rule 203-3 and Form ADV-H contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.⁵ The title of this collection is “Rule 203-3 and Form ADV-H under the Investment Advisers Act of 1940.” The Commission submitted the collection to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved, and subsequently extended, this collection under control number 3235-0538 (expiring on July 31, 2008). 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.

2. Purpose of the Information Collection

The purpose of this collection of information is to permit advisers to obtain a hardship exemption, on a continuing or temporary basis, to not complete an electronic filing. The temporary hardship exemption permits advisers to make late filings due to unforeseen computer

hardship exemption.

³ See Form ADV-H. The adviser applying for a continuing hardship exemption is also required to indicate the reasons that the necessary hardware and software are unavailable, and propose a time period for which the exemption would be in effect.

⁴ For purposes of the Advisers Act, an investment adviser generally is a small entity if (a) it manages assets of less than \$25 million reported on its most recent Form ADV, (b) it does not have total assets of \$5 million or more on the last day of the most recent fiscal year end, and (c) it is not in a control relationship with another investment adviser that is not a small entity. 17 CFR 275.0-7.

⁵ 44 U.S.C. 3501 to 3520.

or software problems, while the continuing hardship exemption permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

3. Role of Improved Information Technology

In 2000, the Commission approved final rules that required all SEC-registered investment advisers to file Part 1 of Form ADV electronically through IARD,⁶ an Internet-based electronic filing system. The information investment advisers submit to the IARD is stored in a database, and the general public has Internet-access to the data.

The information collection pursuant to the rule is for the purpose of not submitting information through the IARD or other electronic means. Accordingly, the Commission's use of computer technology is inappropriate for rule 203-3 and Form ADV-H.

4. Efforts to Identify Duplication

The collection of information requirements of the rule and form are not duplicated elsewhere.

5. Effect on Small Entities

Rule 203-3 and Form ADV-H were specifically designed for small entities. With respect to the temporary hardship exemption filing on Form ADV-H, all advisers are treated equally. However, the continuing hardship exemption is only available to advisers that are small entities. Non small-entity advisers are not granted continuing hardship exemptions. It would defeat the purpose of the rule to exempt small entities from these requirements.

⁶

See supra note 1.

6. Consequences of Less Frequent Collection

The collection of information is necessary to notify the Commission when a filer is unable to meet a filing deadline due to unforeseen technical problems. It is also necessary to enable small entities to request a continuing hardship exemption from the electronic filing requirements under the Advisers Act.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable.

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser profession through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens facing the industry.

The Commission requested public comment on these collection of information requirements before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The information collected pursuant to the rule and form would take the form of filings with the Commission. These filings are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

Rule 203-3 requires that advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV-H. The respondents to the collection of information are all investment advisers that are registered with the Commission.

Based on our experience, registered advisers file hardship exemptions at the rate of 0.1 percent per year, so total respondents will be 11,⁷ and the total annual responses would be 11. The Commission has estimated that compliance with the requirement to complete Form ADV-H imposes a total burden of approximately 1 hour for an adviser. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 11 hours for this collection of information.

Both professional staff time and clerical staff time is required to complete Form ADV-H. It is estimated that for each hour required by the form, professional staff time would compromise 0.625 hours with the remaining 0.375 hours performed by clerical staff. The Commission staff estimates the hourly wage for compliance professionals to be \$245 per hour,⁸ including benefits, and the hourly wage for clerical staff to be \$41 per hour,⁹ including benefits. Accordingly, the

⁷ Approx. 10,817 registrants x 0.001 = 11.

⁸ Data from the SIA's *Report on Office Salaries in the Securities Industry 2006* (the "SIA Report"), modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a Compliance Manager is approximately \$245 per hour.

⁹ Data from the SIA Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a General Clerk is approximately \$41 per hour.

Commission staff estimates the total cost by rule 203-3 and Form ADV-H per response to be \$168.50,¹⁰ for a total burden cost of \$1,853.50.¹¹

13. Estimate of Total Annual Cost Burden

\$0.

14. Estimate of Cost to the Federal Government

There are no additional costs to the federal government.

15. Explanation of Changes in Burden

Our estimate that registered advisers file hardship exemptions at the rate of 0.1 percent per year still holds. However, we no longer need to account for an expected increased filing rate for the influx of new advisers which our most recent revised burden took into account. As a result, the total number of respondents has decreased from 13 (which had included an extra 2 hours for new advisers) to 11.

The currently approved collection of information in Form ADV-H is 13 hours. That is because, when we most recently revised our estimates, we estimated that, in addition to the filing rate for existing advisers at 0.1 percent per year, certain new registrants would have a higher rate of filing Form ADV-H.¹² As a result of the estimated increased filing rate for the influx of new advisers at the time the most recent estimate was prepared, we estimated the annual aggregate

¹⁰ (0.625 hours x \$245) + (0.375 hours x \$41) = \$153.125 + \$15.375 = \$168.50

¹¹ \$168.50 per response x 11 responses annually = \$1,853.50

¹² For purposes of our previous PRA burden analysis, we assumed that 1 out of the 195 then-new registrants would file a temporary exemption and 1 would file a continuing exemption. See Certain Broker Dealers Deemed Not To Be Investment Advisers, Investment Advisers Act Release No. 2376 (Sept. 12, 2005) [70 FR 54629, Sept. 16, 2005].

information collection burden under Form ADV-H and rule 203-3⁷ would be increased by 2 hours over the then-approved 11 hour total burden, for a total of 13 hours.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.