

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION
PROPOSAL TO AMEND FORM ADV
UNDER THE INVESTMENT ADVISERS ACT OF 1940
(17 CFR 279.1)**

A. JUSTIFICATION

1. Necessity for the Information Collection

The Securities and Exchange Commission (the “Commission”) is proposing to amend Part 2 of Form ADV,¹ and related rules under the Investment Adviser Act of 1940, to provide advisory clients with brochures and brochure supplements that contain clear, current, and more meaningful disclosure in a narrative, plain English format.²

The proposal would require advisers registered with the Commission to prepare and electronically file firm brochures through the Investment Adviser Registration Depository (“IARD”).

Form ADV is the two-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by Commission staff, and Part 2 is the client brochure. The paperwork burdens associated with rules 203-1 and 204-1 are included in the approved annual burden associated with Form ADV and thus, do not entail a separate collection of information. Rule 203-1 requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204-1 requires each SEC-registered adviser to file amendments to Form ADV at least annually. Part 2 of Form ADV and the amended rules contain collections of information for which the

¹ 17 CFR 279.1.

² The related amendments are to Advisers Act rules 203-1 [17 CFR 275.203-1], 204-1 [17 CFR 275.204-1], 204-2 [17 CFR 275.204-2], and 204-3 [17 CFR 275.204-3]. The proposing release is attached as Appendix A.

annual aggregate burden will likely be affected as a result of the proposed amendments. The collections are necessary to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, and its conflicts of interest.

The title of the affected collection of information is: “Form ADV” under the Investment Advisers Act of 1940.³ Its OMB control number is 3235-0049. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

2. Purposes of the Information Collection

The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, and its conflicts of interest. We use the information to determine eligibility for registration with us and to manage our regulatory, examination, and enforcement programs. Clients use certain of the information to determine whether to hire or retain an adviser.

This collection of information is found at 17 CFR 275.203-1, 275.204-1, and 279.1 and it is mandatory. Responses are not kept confidential. Respondents to the Form ADV collection of information are investment advisers registered with the Commission or applying for registration with the Commission. The information collected takes the form of disclosures to their clients, potential clients, and the Commission.

3. Role of Improved Information Technology

³ The Commission is also proposing to repeal rule 206(4)-4 [17 CFR 275.206(4)-4] (OMB control number 3235-0345). We will submit application for cancellation of the approved collection of information associated with rule 206(4)-4 after the proposals are adopted.

Investment advisers currently file their Form ADV, Part 1 electronically through the IARD system. The proposed amendments to Form ADV also would require investment advisers to file their brochure electronically through the IARD. This method of collecting information reduces the regulatory burden upon investment advisers by (i) permitting them to electronically file applications for registration, and amendments thereto, at one central location, rather than filing Form ADV separately with the Commission, and the states for notice filing purposes, and (ii) enabling advisers to update only the information that is changed for purposes of the annual amendment or other types of amendments to Form ADV.

4. Efforts to Identify Duplication

The collection of information requirements of the proposed form amendments are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of the proposed amendments to Form ADV are the same for all investment advisers registered with the Commission, including those that are small entities. To some extent small advisers may have reduced burdens under the proposed amendments to Part 2 of Form ADV. This is because small advisers usually have less complicated business practices, fewer employees, and therefore their brochures would be shorter, and easier to prepare, and they may have fewer brochure supplements.

6. Consequences of Less Frequent Collection

The collection of information required by the form is necessary to protect investors by providing clients and potential clients, as well as the Commission, with information about the adviser, its business, and its conflicts of interest. The consequences of not collecting this information would be that clients and prospective clients may not have

the information they need in order to evaluate the adviser's business practices and to determine whether to select or retain that adviser. In addition, if the information is either not collected or is collected less frequently, the Commission's ability to protect investors would be reduced.

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

Not applicable.

8. Consultation Outside the Agency

In its release proposing amendments to Form ADV and related rules, the Commission requests public comment on the effect of information collections under these amendments. In addition, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser industry 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 confronting the industry.

9. Payment or Gift to Respondents

None.

10. Assurance of Confidentiality

The information collected pursuant to Form ADV is through filings with the Commission. These disclosures are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimates of Hour Burden

The currently approved total annual burden for all advisers completing, amending, and filing Form ADV is 109,678 hours. As of September 30, 2007, there were 10,817 SEC registered advisers that file Form ADV through the IARD system.

In 2000, the Commission first proposed amendments to Form ADV, Part 2.⁴ The Commission is reproposing amendments to Part 2 of Form ADV to provide advisory clients with clear, current, and more meaningful disclosure in a narrative, plain English format. Rules 203-1 and 204-1 already require every applicant for investment adviser registration with us to file Form ADV through the IARD and require every investment adviser registered with us to file amendments to Form ADV through the IARD at least annually.⁵ As proposed, the amendments to rules 203-1 and 204-1 and to Part 2 of Form ADV also would require advisers registered with the Commission to prepare and electronically file firm brochures required by Part 2A, and to prepare brochure supplements that they deliver to clients.

The Commission staff previously estimated that during the first year that an adviser responds to Form ADV, including amended Part 2, an average investment adviser's total collection of information burden would be 22.25 hours per adviser.⁶ The

⁴ *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV*, Investment Advisers Act Release No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000)] ("Proposing Release").

⁵ Presently, advisers must submit Part 1 of Form ADV to us through the IARD system, but are not required to submit a copy of current Part 2 of Form ADV to the Commission if they maintain in their files a copy of their Part 2 (and of any brochure they deliver to clients). The copy they maintain in their files is considered filed with the Commission.

⁶ In the Proposing Release the Commission estimated that during the first year, advisers' use of the revised form would result in an average annual collection burden of 22 hours per adviser. See Section IV of the Proposing Release. In conjunction with adoption of a rule requiring advisers to adopt codes of ethics, the Commission amended this estimated burden by adding 0.25 hours to reflect the requirement that an adviser's Part 2 contain a description of its code of ethics and a statement that a copy of the code is

Commission staff estimated that this average annual burden per adviser would apply to both new registrants applying for registration with the Commission, as well as to current registrants required to amend their Form ADVs as a result of the proposed revisions. This estimate included time for preparation of brochures and brochure supplements in addition to the burden of preparing Part 1A.

The above estimate is an average that takes into consideration the thousands of advisers that have a small number of employees as well as the few advisers that have thousands of employees. As of September 30, 2007, nearly 82 percent of the 10,817 investment advisers registered with the Commission had 10 or fewer employees performing advisory functions on their behalf compared to less than one third of one percent of advisers who had more than 1,000 employees. Moreover, the paperwork burden of preparing a narrative firm brochure is likely to vary substantially among advisers, in part because proposed Part 2A would give an adviser considerable flexibility in structuring its disclosure, and also because the amount of disclosure required would vary among advisers.⁷ The burdens associated with preparing the new brochures will depend on the size of the adviser, the complexity of its operations, and the extent to which its operations present conflicts of interest with clients. Accordingly, based on our consultations with industry representatives, we estimate that the average initial annual

available upon request. See *Investment Adviser Codes of Ethics*, Investment Advisers Act Release No. 2256 (July 2, 2004) [69 FR 41696 (July 9, 2004)] (“Code of Ethics Release”).

⁷ Additionally, since the 2000 proposal, the Commission has made certain revisions to the proposed form that scale back the types of clients for whom brochures and supplements must be delivered. These revisions should actually have the effect of reducing the number of advisers who are required to prepare and update brochures, and thus may actually reduce somewhat the burden of the revised Form ADV from what was originally proposed.

burden associated with Form ADV may range from as little as 5 hours for smaller advisers, to approximately 50 hours for medium-sized advisers, to as much as nearly 3,300 hours for larger advisers.⁸ Based on IARD data, we estimate that there are approximately 8,835 small advisers, 1,952 medium-sized advisers, and 30 large advisers.⁹ As such, we believe that 22.25 hours remains an accurate reflection of the time that it will take the *average* adviser to complete revised Form ADV (including both Parts 1 and 2).¹⁰

The Commission believes that the initial paperwork burden will be higher because most advisers would have to redraft and disseminate a narrative brochure and brochure supplements. However, the efficiencies of filing through the IARD, over time, are expected to reduce the initial burdens associated with completing the revised Form ADV. As under the currently approved collection, the estimated initial burdens associated with using the revised form would be amortized over the estimated period that advisers would use their revised brochure. Thus, we have amortized the paperwork burdens of the revised form over a three-year period.¹¹ Respondents under this collection of information would be advisers currently registered with the Commission as well as new applicants for

⁸ For purposes of this estimate, we have categorized small advisers as those with 10 or fewer employees, medium-sized advisers as those with between 11 and 999 employees, and large advisers as those with 1,000 or more employees.

⁹ Unless otherwise noted, the IARD data cited below is based on advisers' responses to questions on Part 1A of Form ADV as of September 30, 2007.

¹⁰ $(8,835 \text{ small advisers} \times \text{an estimated } 5 \text{ hours/adviser}) + (1,952 \text{ medium-sized advisers} \times \text{an estimated } 50 \text{ hours/adviser}) + (30 \text{ large advisers} \times \text{an estimated } 3,296 \text{ hours/adviser}) = 240,655 \text{ hours total. } 240,655 \text{ hours} / 10,817 \text{ total advisers} = 22.25 \text{ hours/adviser.}$

¹¹ In the Proposing Release, the Commission staff chose a fifteen-year amortization period to reflect the anticipated period of time that advisers would use the revised form. However, for purposes of our current proposal, we are amortizing the estimated burden over a shorter period of time – three years.

investment adviser registration with the Commission. We estimate that approximately 1,000 new applicants apply for registration as investment advisers each year. Thus, in combination with the approximately 10,817 existing investment advisers registered with the Commission, we estimate that the total number of respondents under this collection of information would be 11,817 advisers. Based on the estimated average collection of information burden of 22.25 hours per adviser, the total initial collection of information would amount to 22,250 hours for new registrants and 240,678.25 hours for currently registered advisers that re-file Form ADV (including Part 2) through the IARD system, for a total of 262,928.25 hours.¹² Amortizing this total burden imposed by Form ADV over a three-year period would result in an average burden of an estimated 87,643 hours per year,¹³ or of 7.42 hours per year for each new applicant and for each adviser currently registered with the Commission that would re-file through the IARD.¹⁴

In addition to the burdens associated with initial completion and filing of the revised form, we estimate that on average, each adviser filing Form ADV through the IARD system will likely amend their form 1.5 times during the year.¹⁵ We estimate that the collection of information burden for amendments would be 0.75 hours per

¹² Based on historic IARD registration data, we estimate that approximately 1,000 new applicants for registration with the Commission each year. $(10,817 \text{ current registrants} \times 22.25 \text{ hours}) + (1,000 \text{ new applicants} \times 22.25 \text{ hours}) = 240,678.25 \text{ hours} + 22,250 \text{ hours} = 262,928.25 \text{ hours}$.

¹³ $262,928.25 \text{ hours} / 3 \text{ years} = 87,642.75 \text{ hours/year}$.

¹⁴ $87,643 \text{ hours} / 11,817 \text{ advisers} = 7.42 \text{ hours/adviser}$.

¹⁵ This estimate is based on IARD system data regarding the number of filings of Form ADV amendments.

amendment. Thus, we estimate that advisers will file an estimated total of 17,725.5 amendments per year for an estimated total paperwork burden of 13,294 hours per year.¹⁶

Therefore the total annual collection of information burden for advisers to file and complete the revised Form ADV (Parts 1 and 2), including the initial burden for both existing and anticipated new registrants plus the burden associated with amendments to the form, is estimated to be approximately 100,976 hours per year.¹⁷ In addition to these estimated burdens, under this collection of information there is also a burden of 11,971 hours associated with advisers' obligations to deliver to clients copies of their adviser codes of ethics.¹⁸ Thus, the estimated revised total annual hourly burden under this collection of information would be 112,947 hours.¹⁹ This represents an increase of 3,269 hours per year from the currently approved burden.²⁰

¹⁶ 11,817 advisers x 1.5 amendments per year = 17,725.5 amendments per year.
17,725.5 amendments x 0.75 hours = 13,294.125 hours.

¹⁷ 13,294 hours per year attributable to amendments + (1,000 new registrants each year x 7.42 hours) + (10,817 currently-registered advisers x 7.42 hours) = 13,294 hours + 7,420 hours + 80,262.14 hours = 100,976.14 hours.

¹⁸ See Code of Ethics Release, above note Error: Reference source not found. The current approval of this collection estimates that ten percent of an adviser's clients would make such requests, however, subsequently obtained information based on discussions with the industry regarding actual practice indicates that such requests occur significantly less frequently than previously estimated, thus, we have modified our estimate. We now estimate that only one percent of an adviser's clients actually request a copy the adviser's code of ethics. $0.01 \times 1,013$ (the estimated average number of clients per adviser) = 10.13 requests per registrant. We continue to estimate that responding to each such request involves a burden of 0.10 hours, amounting to an annual burden of 1.013 hours for each adviser stemming from the obligation to deliver copies of their codes of ethics to clients. 10.13 requests per adviser x 0.10 hours = 1.013 hours/adviser. This obligation applies to both currently-registered (10,817 respondents) and newly-registered advisers (1,000 respondents), for a total annual burden of 11,971 hours. $11,817$ respondents x 1.013 hours = $11,970.621$ hours.

¹⁹ 11,971 hours + 100,976 hours = 112,947 hours.

²⁰ Revised burden 112,947 hours - currently approved burden of 109,678 hours = 3,269 hours. As discussed above, the currently approved burden includes the estimated paperwork burdens associated with all the revisions to Form ADV that were proposed in

Based on our estimate that the total collection burdens associated with initial completion and filing of the revised Form ADV would amount to 262,928.25 hours,²¹ we expect that advisers would incur costs of approximately \$14,723,982 in providing the initial collection of information.²² In addition, as we stated above, we estimate that on average, each adviser would amend their Form ADV 1.5 times during the year, totaling 13,294 hours for all advisers per year.²³ We estimate that advisers would incur annual costs of \$744,471 in meeting the requirements of preparing brochure amendments.²⁴ The total costs of collection of information associated with Form ADV would therefore be \$15,468,453.

13. Estimate of Total Annual Cost Burden

We estimate that some advisers may incur a one-time initial cost including outside legal fees in connection with preparation of Form ADV (including preparation of Part 2). As we discuss above, advisers subject to the Form ADV requirements vary widely in terms of the size, complexity and nature of their advisory business, and thus, the amount of disclosure required, would vary substantially among advisers. Accordingly, the

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²¹ See above note Error: Reference source not found and accompanying text.

²² We expect that this function will most likely be performed by compliance professionals. Data from the SIFMA's *Report on Office Salaries in the Securities Industry 2006*, 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 cost for a Compliance Clerk is approximately \$56 per hour. 262,928.25 hours x \$56 per hour = \$14,723,982.

²³ See above note Error: Reference source not found and accompanying text.

²⁴ Similarly, we expect that amendments to Part 2 will also most likely be performed by compliance professionals at an estimated cost for a Compliance Clerk of \$56 per hour. 17,725.5 amendments x 0.75 hours per amendment x \$56 = \$744,471.

amount of time, and thus cost, required for outside legal review is likely to vary substantially among those advisers who elect to obtain outside legal assistance. We estimate that the initial per adviser cost related to preparation of Form ADV may range from as little as \$1,200 for smaller advisers, to \$4,400 for medium-sized advisers, to as much as \$10,400 for larger advisers.²⁵ Similarly, whether an adviser even seeks outside legal services in drafting their Form ADV will depend on the size, complexity and nature of their advisory business. We believe that a substantial percentage of advisers, particularly smaller advisers, are unlikely to seek such outside legal services. We estimate that only a quarter of smaller advisers, or about 2,209 advisers, are likely to seek outside legal services.²⁶ Similarly, we estimate that approximately half of medium-sized advisers, or 976 advisers, are likely to seek such services.²⁷ On the other hand, advisers with more significant conflicts are more likely to engage outside legal services to assist in preparation of Form ADV. On this basis we estimate that all of the 30 larger advisers registered with the Commission are likely to incur costs related to such outside legal services. Thus, we estimate that approximately 3,215 advisers, will elect to obtain outside legal assistance, for a total cost among all respondents of \$7,257,200.²⁸

²⁵ Outside legal fees are in addition to the projected hourly per adviser burden discussed above. \$400 per hour for legal services x 3.0 hours per small adviser = \$1,200. \$400 per hour for legal services x 11 hours per medium-sized adviser = \$4,400. \$400 per hour for legal services x 26 hours per large adviser = \$10,400. The hourly cost estimate of \$400 is based on our consultation with advisers and law firms who regularly assist them in compliance matters.

²⁶ 8,835 small advisers x 0.25 = 2,208.75.

²⁷ 1,952 medium-sized advisers x 0.5 = 976.

²⁸ (\$1,200 x 2,209 advisers) + (\$4,400 x 976 advisers) + (\$10,400 x 30 advisers) = \$7,257,200.

14. Estimate of Cost to the Federal Government

There are no costs to the government directly attributable to Form ADV.

15. Explanation of Changes in Burden

The total burden hours for all respondents has increased from the currently approved 109,678 hours per year to 112,947 hours per year. This increase is mainly due to the following factors: (1) our estimated average number of clients per adviser has increased from 670 to 1,013; and (2) the number of respondents has increased from approximately 10,787 investment advisers when we last submitted our application to approximately 10,817 investment advisers. Other factors for the change of burden include: (1) while our estimate of annual average burden per respondent to complete Form ADV Part 1 and Part 2 remains unchanged, we have shortened the amortization period from the current 15 years to three years; (2) our estimate of clients that would request advisers to deliver them copies of adviser code of ethics is decreased from ten percent to one percent.

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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.