

**SUPPORTING STATEMENT**  
**Form ADV-E**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Rule 206(4)-2, adopted under Section 206(4) (15 U.S.C. 80b-6(4)) of the Investment Advisers Act of 1940 (the “Advisers Act”), requires certain SEC-registered investment advisers that have custody of client assets to have an independent public accountant conduct an annual surprise examination of the custodied assets.<sup>1</sup> The rule further requires that the independent public accountant certify the examination results to the Commission within 30 days after the completion of the examination.<sup>2</sup> Form ADV-E is required by the rule as a cover sheet for the auditor’s examination certificate to facilitate the process by which the auditor files the certificate with the Commission.<sup>3</sup>

This requirement for an examination certificate cover page on Form ADV-E is a “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3510 to 3520). Form ADV-E is necessary to facilitate the filing process for the examination certificate. It is found at 17 CFR 279.8 and is mandatory.

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<sup>1</sup> Rule 206(4)-2(a)(3)(ii)(B) (17 CFR 275.206(4)-2). Rule 206(4)-2 requires an SEC-registered adviser to maintain client assets with a qualified custodian such as a bank or a registered broker-dealer. If the adviser has a reasonable basis to believe that the qualified custodian sends account statements directly to its clients at least quarterly, the adviser does not have to undergo an annual surprise examination by an independent public accountant. Most advisers comply with the rule by having the qualified custodian send quarterly account statements directly to their clients and thus are not subject to the annual surprise examination requirement. See rule 206(4)-2(a)(3)(i) and Custody of Funds and Securities of Clients by investment Advisers, Investment Advisers Act Release No. 2176 (Sept. 25, 2003) (68 FR 56692 (Oct. 1, 2003))(Release No. 2176).

<sup>2</sup> Rule 206(4)-2(a)(3)(ii)(B).

<sup>3</sup> This collection of information pertains only to the Form ADV-E filing certificate itself. The paperwork burden of obtaining the examination is separately covered by “Rule 206(4)-2 Under the Investment Advisers Act of 1940 – Custody of Funds or Securities of Clients by Investment Advisers” under the OMB approval number 3235-0241.

The title for the collection of information using Form ADV-E is “Form ADV-E, cover sheet for each certificate of accounting of client securities and funds in the custody of an investment adviser.” The current OMB control number for this collection of information is 3235-0361. The respondents to the information collection through Form ADV-E are certain SEC registered investment advisers that have custody of client funds or securities, and independent public accountants conducting the annual surprise examination.

## **2. Purpose of the Information Collection**

The purpose of the auditor’s examination required to be performed under rule 206(4)-2 is to ensure the safekeeping of client funds and securities and protect investors from potential, and otherwise undetected, larceny and embezzlement. The auditor, upon completing the examination, must certify the results of that examination directly to the Commission. Because Form ADV-E serves as the cover page of the examination certificate, it facilitates the filing of the certificate, and increases the accessibility of the certificate to the Commission’s staff.

Form ADV-E was prompted by the concern that many examination certificates were difficult to handle properly when received by the Commission, because many such certificates contain neither the SEC file number nor the correct name of the investment adviser. The form ensures the auditor supplies this information for the Commission’s reference but does not require any additional information to be gathered or filed with the Commission.

## **3. Role of Improved Information Technology**

Form ADV-E is available on the Commission’s website for downloading.

#### **4. Efforts to Identify Duplication**

The information required is not available elsewhere.

#### **5. Effect on Small Entities**

Form ADV-E does not significantly increase the regulatory burden on any investment adviser, including small entities for purposes of OMB Form 83-I. As discussed in Section A.12. below, the annual burden for each respondent is three minutes.

#### **6. Consequences of Less Frequent Collection**

Form ADV-E must be filed annually. Less frequent collection would inhibit the dissemination of timely information that enables the Commission's staff to ensure the safekeeping of client funds.

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

The collection of information imposes no additional requirements regarding record retention.

#### **8. Consultation Outside the Agency**

Form ADV-E was proposed for public comment before its adoption. To facilitate the adoption of Form ADV-E as a uniform form for all jurisdictions, the Commission consulted with the North American Securities Administrators Association.<sup>4</sup> The Commission is not aware of any dissatisfaction with the form.

The Commission and the staff of the Division of Investment Management participate in

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<sup>4</sup> See Forms for Filing by Accountants, Investment Advisers Act Release No. 1181 (July 26, 1989) (54 FR 32048 (Aug. 4, 1989)). Most states generally require investment advisers doing business in their states to register with the states if they are not qualified to register with the Commission. Many of these states have custody rules that, like the SEC custody rule, require certain registered advisers to undergo an annual surprise examination of client assets that are in their custody and require the auditor to certify the audit results. Form ADV-E is designed as a cover to the examination certificates by auditors for SEC-registered advisers as well as state-registered advisers.

various forums, such as public conferences, meetings, and informal exchanges, which provide the Commission and the staff with an ongoing medium for ascertaining and acting upon paperwork burdens confronting the industry.

In addition, the Commission requested public comment on the collection of information requirements of Form ADV-E before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to these requests.

**9. Payment or Gift to Respondents**

Not applicable.

**10. Assurances of Confidentiality**

Not applicable.

**11. Sensitive Questions**

Not applicable.

**12. Estimate of Hour Burden**

The total annual Form ADV-E compliance burden approved by OMB in 2006 was 11.55 hours for 231 advisers that the Commission staff then estimated would be subject to the requirement of filing Form ADV-E. In reaching this estimate, the Commission estimated each respondent would spend 0.05 hours annually in compliance.

Based on current information from advisers registered with the Commission, the Commission staff now estimates that 189 advisers would be required to file Form ADV-E under rule 206(4)-2.<sup>5</sup> The Commission staff continues to estimate the burden on each adviser to be

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<sup>5</sup> This estimate is based on the number of Form ADV-E filings made with the Commission in 2007. In September 2003, the Commission substantially amended rule 206(4)-2. The amended rule has had the effect of reducing the number of advisers that are subject to the annual surprise examination. For

0.05 hours annually. The total annual Form ADV-E compliance burden is therefore estimated to be 9.45 hours.<sup>6</sup>

The Commission staff expects that Form ADV-E will be filled out by advisers' compliance clerks. Based on an average salary including fringe benefits of \$62 per hour,<sup>7</sup> the total cost of the information collection requirement of Form ADV-E is estimated to be approximately \$585.90.<sup>8</sup>

### **13. Estimate of Total Annual Cost Burden**

There is no cost burden other than the cost of the hour burden described above.

### **14. Estimate of Cost to the Federal Government**

Form ADV-E is designed to facilitate the filing of examination certificates required under rule 206(4)-2. The staff devotes less time in processing examination certificates as a result. The cost of processing Form ADV-E is insignificant.

### **15. Explanation of Changes in Burden**

As noted above, the decrease in the total compliance burden is attributable to a decrease in the number of SEC-registered advisers that are subject to the surprise examination

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further information, see supra note 1 and Release No. 2176.

<sup>6</sup> 189 x 0.05 = 9.45

<sup>7</sup> The \$ 62/hour figure for a Compliance Clerk is from the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2007, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>8</sup> 9.45 hrs x \$62 hourly wage = \$585.90

requirement. As a result, fewer advisers are required to file Form ADV-E.

**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.