

**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.<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. Responses provided to the Commission are not kept confidential.

The title for the collection of information is “Form ADV-E, cover sheet for each certificate of accounting of client securities and funds in the custody of an investment adviser.”

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<sup>1</sup> Rule 206(4)-2(a)(3)(ii)(B) (17 CFR 275.206(4)-2).

<sup>2</sup> Id.

<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 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.

The Commission is proposing, in connection with the proposed amendments to rule 206(4)-2,<sup>4</sup> three amendments to the instructions to Form ADV-E: (1) to amend the instructions to require that the form and the accountant's examination certificate that accompanies it be filed electronically with the Commission; (2) to amend the instructions to reflect the proposed requirement in rule 206(4)-2 that Form ADV-E and the examination certificate must be filed within 120 days of the time chosen by the accountant for the surprise examination; and (3) to add an instruction that would implement the proposed change to rule 206(4)-2 regarding the accountant's obligation under the written agreement with the adviser to file Form ADV-E accompanied by the termination statement within four business days of the accountant's resignation, dismissal, or removal.

## **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.

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<sup>4</sup> See Custody of Funds or Securities of Clients by Investment Advisers, Investment Advisers Act Release No. 2876 (May 20, 2009) [74 FR 25354 (May 27, 2009)].

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. The proposed amended form would also be used as a cover sheet when an independent public accountant retained to perform the surprise examination as required by rule 206(4)-2 submits its statement upon termination of its engagement.

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

Under the proposed rule 206(4)-2, respondents would file Form ADV-E electronically through the Investment Adviser Registration Depository ("IARD") system.

### **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.

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

Form ADV-E must be filed annually reporting the result of the surprise examination and, if the proposed amendments are adopted, will be filed upon the resignation, dismissal, removal or other termination of an independent public accountant conducting the surprise examination. 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**

In its release proposing amendments to rule 206(4)-2, Form ADV-E, and other 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**

Not applicable.

**10. Assurance 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 9 hours. The Commission staff estimated the burden on each adviser to be 0.05 hours annually. We estimate that this collection of information would increase to 575 hours based on the proposed rule amendments. This increase results primarily from an increase in the estimated

number of advisers that would be subject to the requirement of completing Form ADV-E under the proposed amendments to rule 206(4)-2 and the additional collections of information proposed by the amendments to the rule.

We now estimate that there would be 9,575 advisers required to undergo an annual surprise examination and complete Form ADV-E, and that the total annual hour burden for Form ADV-E in connection with the surprise examination requirement would thus be increased to 479 hours.<sup>5</sup>

In addition, under the proposed amendments, rule 206(4)-2 would require an adviser subject to the surprise examination to enter into a written agreement with the independent public accountant that specifies the accountant's duties, including filing Form ADV-E upon the termination of its engagement. Based on an assumption that advisers change their independent public accountants every five years on average, 1,915 advisers would, under our proposal, be required each year to complete Form ADV-E with respect to an accountant's termination.<sup>6</sup> The total annual hour burden in connection with this proposal would be 96 hours,<sup>7</sup> and the total annual hour burden for advisers to complete Form ADV-E in connection with the surprise examination and the termination statement would be 575 hours.<sup>8</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 \$63 per hour,<sup>9</sup> the

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<sup>5</sup>  $9,575 \times 0.05 = 479.$

<sup>6</sup>  $9,575 / 5 = 1,915.$

<sup>7</sup>  $1,915 \times 0.05 = 96.$

<sup>8</sup>  $479 + 96 = 575.$

<sup>9</sup> Data from the Securities Industry and Financial Markets Association's Office Salaries in

total cost of the information collection requirement of Form ADV-E is estimated to be approximately \$36,225.<sup>10</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 increase in hour burden results from an increase in the estimated number of advisers that would be subject to the requirement of completing Form ADV-E under the proposed amendments to rule 206(4)-2 and the additional collections of information proposed by the amendments relating to filing Form ADV-E when an independent public accountant performing the surprise examination terminates its engagement.

**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.

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the Securities Industry 2008, 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, suggest that cost for this position is \$63 per hour.

<sup>10</sup> 575 x \$63 = \$36,225.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.