

**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.¹ The rule further requires that the independent public accountant certify the examination results to the Commission.² 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.³

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.”

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

² *Id.*

³ 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 adopting, in connection with the amendments to rule 206(4)-2,⁴ 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 new 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 implements the amendment 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.

The adoption of Form ADV-E originated from the concern that many examination certificates were difficult to handle properly when received by the Commission because they

⁴ See *Custody of Funds or Securities of Clients by Investment Advisers*, Investment Advisers Act Release No. 2968 (Dec. 30, 2009) [75 FR 1456 (Jan. 11, 2010)].

often lacked an SEC file number or 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 amended form will 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 amended rule 206(4)-2, respondents will 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 (1) annually to report the result of the surprise examination and, (2) 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 requested public comment on the effect of information collections under these amendments and received no comment relating to Form ADV-E. 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, and that 189 advisers were subject to the collection burden. As a result of the amendments, we now estimate that 1,859 advisers will be required to undergo an annual surprise examination and

complete Form ADV-E, although we do not expect the hour burden on each adviser to increase. Therefore, we estimate the total annual hour burden for Form ADV-E in connection with the surprise examination requirement will increase to 93 hours.⁵ This increase results primarily from an increase in the estimated number of advisers that will be subject to the requirement of completing Form ADV-E under the amendments to rule 206(4)-2 and the additional collections of information resulting from the amendments to the rule.

In addition, amended rule 206(4)-2 requires 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, 372 advisers will be required each year to complete Form ADV-E with respect to an accountant's termination.⁶ The total annual hour burden in connection with this change is 19 hours,⁷ and the total annual hour burden for advisers to complete Form ADV-E in connection with the surprise examination and the termination statement is 112 hours.⁸ The total cost of the annual burden is estimated at \$7,056.⁹

⁵ $1,859 \times 0.05 = 93.$

⁶ $1,859 / 5 = 372.$

⁷ $372 \times 0.05 = 19.$

⁸ $93 + 19 = 112.$

⁹ 112 (hour spend in complying with the requirement) \times \$63 (average rate for compliance clerks)] = \$7,056 hours. See Adopting Release at n.266 for explanation of estimated hour rates of compliance clerks.

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 of 103 hours results from an increase in the estimated number of advisers that will be subject to the requirement of completing Form ADV-E under the amendments to rule 206(4)-2 and the additional collections of information resulting from 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.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.