

SUPPORTING STATEMENT
Rule 0-2 and Form ADV-NR

A. JUSTIFICATION

1. Necessity for the Information Collection

Rule 0-2 establishes procedures by which a person may serve process, pleadings, or other papers on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser. Under Rule 0-2, persons who wish to serve the above referenced parties may do so by furnishing the Securities and Exchange Commission (“Commission” or “SEC”) with one copy of the papers that are to be served along with one copy for each named party. The Secretary of the Commission (“Secretary”) will promptly forward a copy to each named party by registered or certified mail. If the Secretary certifies that the rule was followed, the certification constitutes evidence of service of process under rule 0-2.

For rule 0-2 to be effective, the non-resident parties (investment advisers, general partners, or managing agents) must appoint the Commission as agent for service of process. For most non-resident investment advisers, the consent to service of process is furnished by signing the non-resident investment adviser execution page of Form ADV. Form ADV-NR is required only of a non-resident general partner or a non-resident managing agent of any investment adviser. Form ADV-NR is a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission.

It is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring legal actions against non-resident investment advisers, and non-resident general partners or non-resident managing agents of investment advisers for violations of the federal securities laws.

The title of this collection of information is Rule 0-2 – General Procedures for Serving Non-Residents and Form ADV-NR – Appointment of Agent for Service of Process by Non-Resident General Partner and Non-Resident Managing Agent of an Investment Adviser under the Investment Advisers Act of 1940. Rule 0-2 and Form ADV-NR contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.¹ This collection of information has been previously approved and subsequently extended by the Office of Management and Budget (“OMB”) under control number 3235-0240. The likely respondents to this information collection would be each non-resident general partner or managing agent of an SEC-registered adviser. This collection of information is found at 17 CFR 275.0-2 and it is mandatory. Responses are not kept confidential.

2. Purpose of the Information Collection

Rule 0-2 and Form ADV-NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and regulatory actions against investment advisers that are doing business in the United States, but are not residents.

Non-resident general partners and managing agents of SEC-registered investment advisers must make a one-time filing of Form ADV-NR with the Commission. Form ADV-NR requires these non-resident general partners and managing agents to furnish us with a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. The collection of information is

¹ 44 U.S.C. 3501 to 3520.

necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident partners and agents for violations of the federal securities laws. Respondents are non-resident general partners and managing agents of registered advisers. This collection of information is found at 17 CFR 279.4.

3. Role of Improved Information Technology

Currently, all SEC-registered investment advisers are required to file Part 1 of Form ADV electronically through the Investment Adviser Registration Depository (“IARD”).² 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.

A majority of non-resident investment advisers file a consent to service of process electronically on IARD. However, non-resident general partners and non-resident managing agents are required to file a hardcopy of Form ADV-NR with the Commission. Accordingly, the Commission’s use of computer technology will have little effect on Form ADV-NR.

4. Efforts to Identify Duplication

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

5. Effect on Small Entities

All advisers registered with the Commission, regardless of their size, are equally subject to the collection requirements of Rule 0-2 and Form ADV-NR. It would defeat the purpose of the rule to exempt small entities from these requirements.

² Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) (65 FR 57438, Sept. 22, 2000).

6. Consequences of Less Frequent Collection

If we did not require a non-resident general partner or non-resident managing agent to file Form ADV-NR that appoints the Commission as agent for service, it would be much more difficult for both advisory clients and financial service regulators to effectively bring a lawsuit against a non-resident investment adviser.

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 continue to 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 facing the industry. In addition, the Commission requested public comment on the information collection requirements before submitting this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request.

9. Payment or Gift to Respondents

None.

10. Assurance of Confidentiality

The information collected pursuant to the rule and Form ADV-NR are filings with the Commission. These disclosures are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

Non-resident general partners and non-resident managing agents of SEC-registered investment advisers are required to file Form ADV-NR only once. When the current collection was approved in 2007, we estimated the number of responses to be approximately 18 annually. The staff also estimated that the preparation and filing of Form ADV-NR would require approximately one hour of the non-resident general partner's or managing agent's time. The currently approved collection of information burden in Form ADV-NR is 18 hours. We do not believe that this burden has changed.

An adviser would likely use a combination of compliance clerks and clerical staff to complete Form ADV-NR and file it with the Commission. The Commission staff (staff) estimates the hourly wage for compliance clerks to be \$59 per hour, including benefits, and the hourly wage for general clerks to be \$52 per hour, including benefits.³ For each burden hour, compliance clerks would perform an estimated 0.75 hours, and general clerks also would perform an estimated 0.25 hours. The total cost per response therefore would be an estimated \$57.25,⁴ for a total burden cost of \$1030.50.⁵

These estimates of average burden hours and average costs of those average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study, or the cost of Commission rules and forms.

³ The \$59/hour figure for a compliance clerk and \$52/hour for a general cleric is from SIFMA's Office Salaries in the Securities Industry 2009, 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.

⁴ $(0.75 \text{ hours per compliance clerk} \times \$59) + (0.25 \text{ hours per general clerk} \times \$52) (\$44.25 + \$13.00) = \$57.25.$

⁵ $\$57.25 \text{ per adviser} \times 18 \text{ advisers} = \$1030.50.$

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

There are no additional costs to the federal government.

15. Explanation of Changes in Burden

None.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Not Display Expiration Date

Not applicable.

18. Exception to Certification Statement

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.