

SUPPORTING STATEMENT
Rule 203-2 and Form ADV-W

A. JUSTIFICATION

1. Necessity of Information Collections

Rule 203-2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration, or a pending registration application, with the Securities and Exchange Commission (“Commission” or “SEC”), and requires every person withdrawing from investment adviser registration with the Commission to file Form ADV-W electronically on the Investment Adviser Registration Depository (“IARD”). The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ shifts primary responsibility from the SEC to the state securities authorities for the regulatory oversight of most investment advisers with assets under management between \$25 million and \$100 million.² The Commission proposed a rule that would require the advisers that must switch from SEC to state registration to withdraw their SEC registrations by filing Form ADV-W no later than October 19, 2011.³ The Commission also proposed to amend the exemption in rule 203A-2(b) that permits certain pension consultants to register with the SEC by raising the minimum value of plan assets an adviser must consult on from \$50 million to \$200 million annually, which would require advisers providing pension consulting services to plans of less than \$200 million to withdraw their SEC registrations by filing Form ADV-W.⁴ If the proposed

¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² See section 410 of the Dodd-Frank Act.

³ Proposed rule 203A-5(b). The proposing release is attached as Appendix A.

⁴ Proposed rule 203A-2(a)(a) .

amendments are adopted, the annual aggregate burden associated with the collections of information for rule 203-2 and Form ADV-W would be affected.

The potential respondents to this information collection in connection with the proposed amendments are all investment advisers registered with the Commission on July 21, 2011 that must withdraw their registrations as a result of the implementation of the Dodd-Frank Act. The collection of information would be necessary to assure that the Commission and the public are notified when each of these investment advisers withdraws its SEC registration.

The title of the affected collection of information is: “Rule 203-2 and Form ADV-W under the Investment Advisers Act of 1940.” Its OMB control number is 3235-0313. 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. This collection of information is found at 17 CFR 275.203-2 and 17 CFR 279.2 and it is mandatory. Responses are not kept confidential.

2. Purposes of Information Collection

Under the proposal, Form ADV-W would be used to withdraw an investment adviser’s registration with the Commission as a result of the proposed amendments to implement the Dodd-Frank Act. The purpose of the information collection would be to notify the Commission and the public when each investment adviser withdraws its SEC registration.

3. Role of Improved Information Technology

All SEC-registered investment advisers are required to file Part 1 of Form ADV, the form used to register as an investment adviser, electronically through the IARD. 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 state notice filing requirements electronically.

In conjunction with mandating electronic filing of investment adviser registration forms, the Commission also mandated electronic filing of the form used to withdraw from registration. To withdraw an investment adviser registration, rule 203-2 requires the electronic filing of Form ADV-W on the IARD. Accordingly, the SEC proposed to require the SEC-registered advisers that will be required to withdraw their registrations as a result of the proposed amendments to implement the Dodd-Frank Act to withdraw their registrations by filing Form ADV-W electronically on the IARD.

4. Efforts to Identify Duplication

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

5. Effect on Small Entities

The requirements of rule 203-2 and Form ADV-W are the same for all investment advisers registered with the Commission, including small entities. It would defeat the purpose of the rule to exempt small entities from these requirements.

6. Consequences of Less Frequent Collection

Rule 203-2 requires an adviser to notify the Commission when it is withdrawing its SEC registration. If the Commission did not collect this information, the Commission and

the public would be unaware that an adviser had gone out of business or was ineligible to remain registered with the Commission.

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

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

8. Consultations Outside of the Agency

In its release proposing new rules and rule amendments to implement the Dodd-Frank Act, the Commission requests public comment on the effect of information collections under these rules and amendments. We will review and consider all comments received on the proposal. Comments received on the proposal and the information collection requirements may be viewed at <http://www.sec.gov/comments/s7-36-10/s73610.shtml>. In addition, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser profession 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.

9. Payment or Gifts to Respondents

None.

10. Assurances of Confidentiality

The information collected pursuant to rule 203-2 and Form ADV-W are filings with the Commission. These filings are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

The current approved total estimated collection of information burden imposed by rule 203-2 and Form ADV-W is 500 hours per year. This burden is based on estimates, derived from past filing volume, that approximately 1,000 respondents file Form ADV-W annually, that approximately 50 percent of those advisers cease operations and complete the entire form to withdraw from all jurisdictions in which they are registered (full withdrawal), and that the remaining 50 percent withdraw from some, but not all, of the jurisdictions in which they are registered and omit certain items from the form (partial withdrawal).⁵ Compliance with the requirement to complete Form ADV-W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal, for a current approved burden of 500 hours.⁶

If adopted, the proposal is expected to increase the current approved burden by increasing the number of respondents filing Form ADV-W. We estimate that if the proposal is adopted, approximately 4,100 mid-sized advisers would be required to

⁵ This information is based on data collected from Form ADV-Ws filed through the IARD during year 2009. Form ADV-W is designed to accommodate the different types of withdrawals investment advisers may file. An investment adviser withdrawing from some, but not all, of the jurisdictions in which it is registered omits certain items (e.g., the location of its books and records) that the SEC does not need from an adviser continuing in business as a state-registered adviser.

⁶ $(500 \text{ full Form ADV-Ws} \times 0.75 \text{ hours}) + (500 \text{ partial Form ADV-Ws} \times 0.25 \text{ hours}) = 375 + 125 = 500.$

withdraw their SEC registrations by filing Form ADV-W electronically on the IARD,⁷ and approximately 50 advisers that currently rely on the pension consultant exemption would be required to withdraw their SEC registration in accordance with rule 203-2 by filing Form ADV-W.⁸ Advisers that would be required to file Form ADV-W if the proposal is adopted would file only a partial withdrawal because they would be registered with the states. As discussed above, compliance with the requirement to complete Form ADV-W imposes a total burden of approximately 0.25 hours for an adviser filing for partial withdrawal. Thus, we estimate that the proposal associated with filing Form ADV-W would generate an additional burden of 1,038 hours,⁹ for a total burden of 1,538 hours.¹⁰

⁷ According to data from the Investment Adviser Registration Depository (“IARD”) as of September 1, 2010, 4,136 SEC-registered advisers either: (i) had assets under management between \$25 million and \$100 million and did not indicate on Form ADV Part 1A that they are relying on an exemption from the prohibition on Commission registration; or (ii) were permitted to register with us because they rely on the registration of an SEC-registered affiliate that has assets under management between \$25 million and \$100 million and are not relying on an exemption.

⁸ Based on IARD data as of September 1, 2010, approximately 353 advisers rely on the pension consultant exemption from registration. We estimate that approximately 15%, or 50, of the current advisers relying on this exemption from the prohibition on registration would no longer be eligible to rely on the exemption if adopted as proposed. This estimate is based on our understanding that a typical pension consultant would have plan assets far in excess of the proposed higher threshold, in light of the fact that most pension plans contain a significant amount of assets. These advisers do not report the amount of plan assets for which they provide investment advice, so we are unable to determine how many have between \$50 million and \$200 million of plan assets and may have to register with the state securities authorities as a result of the proposed amendment. It is also difficult to determine whether such advisers would be prohibited from registering with the Commission because they are required to register with and are subject to examination by the state securities authority where they maintain a principal office and place of business under the Dodd-Frank Act.

⁹ [4,100 + 50 responses on Form ADV-W] x 0.25 hours = 1,038 hours.

¹⁰ 500 current hours + 1,038 additional hours = 1,538 hours.

The current approved collection of information burden for rule 203-2 and Form ADV-W is based on an estimate that 500 advisers filing a full withdrawal would likely utilize a combination of compliance professionals and clerical staff to complete Form ADV-W and file it with the Commission, and 500 advisers filing a partial withdrawal would likely use only clerical staff to complete and file Form ADV-W, for a total annual cost of \$71,375.

If the proposal is adopted, we anticipate that investment advisers would likely utilize compliance clerks to complete the required portions of Form ADV-W for a partial withdrawal and file it with the Commission. The Commission estimates the hourly wage rate for a compliance clerk to be \$59 per hour, including benefits.¹¹ For each partial withdrawal, the estimated cost would be \$14.75 per withdrawal,¹² or an additional \$61,213 total.¹³ Accordingly, the Commission staff estimates the total annual cost of Form ADV-W to be \$132,588.¹⁴

13. Estimate of Total Annual Cost Burden

\$0.

14. Estimate of Cost to the Federal Government

\$0.

15. Explanation of Changes in Burden

¹¹ Data from the Securities Industry Financial Markets Association's *Office Salaries in the Securities Industry 2009* ("SIFMA Office Salaries Report") 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 the hourly rate for this position is \$59.

¹² 0.25 hours x \$59 (hourly wage for clerk) = \$14.75 (total cost for Form ADV-W filing).

¹³ \$14.75 * 4,150 = \$61,213.

¹⁴ \$71,375 + \$61,213 = \$132,588.

The revised total annual collection of information burden for rule 203-2 and Form ADV-W is estimated to be 1,538 hours. This burden represents an increase of 1,038 hours from the current approved burden.¹⁵ These increases are attributable primarily to the 4,150 additional advisers expected to file Form ADV-W to withdraw from SEC registration as a result of the Dodd-Frank Act.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Approval to Display Expiration Date

Not applicable.

18. Exception to Certification Requirement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

¹⁵ 1,538 revised burden hours – 500 current approved burden hours = 1,038 hours.