

1
SUPPORTING STATEMENT
Form ADV-H

A. JUSTIFICATION

1. Necessity for the Information Collection

On September 12, 2000, the Securities and Exchange Commission (the “Commission”) approved final rules that required all SEC-registered investment advisers to file Part 1 of Form ADV electronically through the Investment Adviser Registration Depository (“IARD”).¹ 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.

Recognizing that technological glitches occur and certain advisers may not be able to meet the electronic filing requirements, the Commission adopted rule 203-3 (17 CFR 275.203-3), which is entitled “Hardship exemptions,” along with Form ADV-H (17 CFR 279.3), under the Investment Advisers Act of 1940 (15 U.S.C. 80b). Rule 203-3 permits investment advisers to request either a temporary or continuing hardship exemption on a hard copy filing of Form ADV-H. An adviser requesting a temporary hardship is required to file Form ADV-H, and provide a brief explanation of the nature and extent of the temporary technical difficulties.² Form ADV-H requires an adviser requesting a continuing hardship

¹ Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438, Sept. 22, 2000].

² Similarly, issuers that submit electronic filings on EDGAR apply for a temporary hardship exemption on Form TH. 17 CFR 232.201. Form ADV-H is based on Form TH, which is filed by issuers relying on the temporary hardship

exemption to indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense.³ A continuing hardship exemption is available only to a registered adviser that is a small entity.⁴

On November 19, 2010, the Commission proposed new rule 204-4 under the Advisers Act along with amendments to Form ADV-H as part of a broader proposal to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).⁵ Proposed new rule 204-4 would require certain advisers exempt from registration with the Commission to file reports on Form ADV electronically through the IARD.⁶ Like rule 203-

exemption. The adviser applying for a temporary hardship exemption also is required to describe the extent to which the adviser previously submitted documents in electronic format with the same hardware and software, the burden and expense of using alternative means to submit the filing in electronic format, and any other reasons why a temporary hardship exemption is warranted.

³ See Form ADV-H. The adviser applying for a continuing hardship exemption is required to indicate the reasons that the necessary hardware and software are unavailable, describe the burden and expense of using alternative means to submit the filing in electronic format, propose a time period for which the exemption would be in effect, and provide any other reasons why a continuing hardship exemption is warranted.

⁴ For purposes of the Advisers Act, an investment adviser generally is a small entity if (a) it manages assets of less than \$25 million reported on its most recent Form ADV, (b) it does not have total assets of \$5 million or more on the last day of the most recent fiscal year end, and (c) it is not in a control relationship with another investment adviser that is not a small entity. 17 CFR 275.0-7.

⁵ See *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3110 (Nov. 19, 2010) (“Implementing Release”); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁶ See Proposed rule 204-4(a),(b). Both section 203(l) of the Advisers Act [15 U.S.C. 80b-3(l)] (which provides an exemption for an adviser that advises solely one or more “venture capital funds”) and section 203(m) of the Advisers Act [15 U.S.C. 80b-3(m)] (which instructs the Commission to exempt any adviser that acts solely as an adviser to private funds and has assets under management in the United States of less than \$150 million) provide that the Commission shall require such advisers to maintain such records, which we have the authority to examine, and to submit reports “as the Commission determines necessary or appropriate in the public interest.” As part of the Implementing Release, we proposed new rule 204-4 to require these “exempt

3, proposed rule 204-4 would permit these exempt reporting advisers to request a temporary hardship exemption; although unlike rule 203-3, it does not provide for a continuing hardship exemption. Under proposed rule 204-4, exempt reporting advisers requesting a temporary hardship exemption would be required to complete and file Form ADV-H, which we have also proposed to amend for that purpose.

Form ADV-H contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.⁷ The title of this collection is “Form ADV-H under the Investment Advisers Act of 1940.”⁸ This collection of information has been approved and subsequently extended by the Office of Management and Budget (“OMB”) under control number 3235-0538. This collection of information is found at 17 CFR 279.3 and is mandatory. Responses are not kept confidential. 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 control number.

2. Purpose of the Information Collection

The purpose of this collection of information is to permit advisers to obtain a hardship exemption to not complete an electronic filing. The temporary hardship exemption that is available to registered advisers under rule 203-3 and that would be available to exempt reporting advisers under proposed rule 204-4, permits advisers to make late filings due to unforeseen computer or software problems. The continuing hardship exemption available to registered

reporting advisers” to file reports with the Commission on Form ADV and to submit these reports through the Investment Adviser Registration Depository (“IARD”) using the same process as registered investment advisers.

⁷ 44 U.S.C. 3501 to 3520.

⁸ We are changing the name of the information collection from “Rule 203-3 and Form ADV-H under the Investment Advisers Act of 1940” to simply “Form ADV-H” to account for the fact that proposed rule 204-4, along with rule 203-3, would require advisers seeking a hardship exemption to complete and file Form ADV-H.

advisers under rule 203-3 permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

3. Role of Improved Information Technology

Currently, all SEC-registered investment advisers are required to file Part 1 of Form ADV electronically through the IARD.⁹ The IARD is an Internet-based system that investment advisers access through computers in their offices, without the need for specialized software or hardware. As discussed, we proposed to also require exempt reporting advisers to file reports on Form ADV and to submit these reports through the IARD. 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.

The information collection pursuant to the rule is for the purpose of not submitting information through the IARD or other electronic means. Accordingly, the Commission's use of computer technology is inappropriate for Form ADV-H.

4. Efforts to Identify Duplication

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

5. Effect on Small Entities

Form ADV-H was specifically designed for small entities. With respect to the temporary hardship exemption filing on Form ADV-H, all advisers are treated equally. However, the continuing hardship exemption available under rule 203-3 is only available to registered advisers that are small entities. Non small-entity advisers are not granted continuing hardship exemptions. It

⁹ Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) (65 FR 57438, Sept. 22, 2000).

would defeat the purpose of the rule to exempt small entities from these requirements.

6. Consequences of Less Frequent Collection

The collection of information is necessary to notify the Commission when a filer is unable to meet a filing deadline due to unforeseen technical problems. It is also necessary to enable registered advisers that are small entities to request a continuing hardship exemption from the electronic filing requirements under the Advisers Act.

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

Not applicable.

8. Consultation Outside the Agency

In the Implementing Release, the Commission requested public comment on the effect of information collections under proposed rule 204-4 and proposed amendments to Form ADV-H. Comments received may be viewed at <http://www.sec.gov/comments/s7-36-10/s73610.shtml>. The Commission will review and consider the comments it receives on the proposal. In addition, the Commission and the staff of the Division of Investment Management continue to 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 Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The information collected pursuant to the rule and form would take the form of filings with the Commission. These filings are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

Rule 203-3 currently requires that registered advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV-H. Proposed rule 204-4 would require that exempt reporting advisers requesting a temporary hardship exemption submit the request on Form ADV-H. The current approved burden for Form ADV-H is 11 hours, based on an estimated 11 responses per year requiring one hour per response.

Given the estimated 11,850 advisers currently registered with the Commission, 11 annual responses to Form ADV-H means that approximately 1 response is filed per 1,000 registered advisers.¹⁰ Based on the proportion of annual responses to the number of registered advisers, we estimate that exempt reporting advisers would file approximately 2 responses to Form ADV-H annually if proposed rule 204-4 is adopted.¹¹ We also estimate that Form ADV-H would impose the same average burden per response of 1 hour on exempt reporting advisers. Thus, proposed rule 204-4 would result in an increase in the total hour burden associated with Form ADV-H of 2 hours.¹² However, the Dodd-Frank Act's amendments to sections 203A and 203(b)(3) of the

¹⁰ 11,850 registered advisers ÷ 11 responses = approximately 1 response per 1,000 registered advisers)

¹¹ We estimate that approximately 2,000 exempt reporting advisers would file reports on Form ADV in accordance with proposed rule 204-4. Thus, we estimate 2 responses to Form ADV-H in accordance with proposed rule 204-4 (2,000 exempt reporting advisers x 1 response per 1000 advisers = 2 responses).

¹² 2 responses x 1 hour = 2 hours.

Advisers Act will change our estimates of the total number of *registered* advisers.¹³ Due to these amendments to the Advisers Act, we estimate that the number of registered advisers will decrease from 11,850 to 9,150.¹⁴ Given the reduction in registered advisers, we estimate that Form ADV-H will receive 9 annual responses from registered advisers, for a total annual burden for registered advisers of 9 hours.¹⁵ Thus, if rule 204-4 is adopted as proposed, the total burden associated with Form ADV-H would continue to be 11 hours.¹⁶

Both professional staff time and clerical staff time is required to complete Form ADV-H. It is estimated that for each hour required by the form, professional staff time would comprise 0.625 hours with the remaining 0.375 hours performed by clerical staff. The Commission staff estimates the hourly wage for compliance professionals to be \$294 per hour,¹⁷ including benefits, and the hourly wage for clerical staff to be \$52 per hour,¹⁸ including benefits. Accordingly, the

¹³ Section 410 of the Dodd-Frank Act has amended section 203A of the Advisers Act [15 U.S.C. 80b-3A] to create a new group of “mid-sized advisers” and shift primary responsibility for their regulatory oversight to the state securities authorities. It has accomplished this by prohibiting from registering with the Commission an investment adviser that is registered as an investment adviser in the state in which it maintains its principal office and place of business and that has assets under management between \$25 million and \$100 million. In addition, as discussed above, section 403 of the Dodd-Frank Act eliminates the “private adviser” exemption in section 203(b)(3) of the Advisers Act.

¹⁴ See Implementing Release, *supra* note 5, at n. 377.

¹⁵ 9,150 registered advisers x 1 response per 1,000 advisers = 9 responses. 9 responses x 1 hour = 9 hours.

¹⁶ 9 hours for registered advisers + 2 hours for exempt reporting advisers = 11 hours.

¹⁷ Data from the Securities Industry and Financial Markets Association’s *Management and Professional Earnings in the Securities Industry 2009*, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a Compliance Manager is approximately \$294 per hour.

¹⁸ Data from the Securities Industry and Financial Markets Association’s *Office Salaries in the Securities Industry 2009*, 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 cost for a General Clerk is approximately \$52 per hour.

Commission staff estimates the total cost by rule 203-3 and Form ADV-H per response to be \$203.25,¹⁹ for a total burden cost of \$2,235.75.²⁰

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.

¹⁹ $(0.625 \text{ hours} \times \$294) + (0.375 \text{ hours} \times \$52) = \$183.75 + \$19.50 = \$203.25$

²⁰ $\$203.25 \text{ per response} \times 11 \text{ responses annually} = \$2,235.75$