

SUPPORTING STATEMENT REVISIONS TO FORM ADV

A. JUSTIFICATION

1. Necessity for the Information Collection

The Securities and Exchange Commission (the “Commission”) proposed amending Form ADV¹ and rule 204-1² and adopting new rule 204-4³ under the Investment Advisers Act of 1940 (the “Advisers Act” or the “Act”), to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁴ In order to give effect to provisions in Title IV of the Dodd-Frank Act, we proposed amendments to Part 1A of Form ADV to reflect the new statutory threshold for registration with the Commission and to restructure it to accommodate filings by exempt reporting advisers. Additionally, to enhance our ability to oversee investment advisers, including those private fund advisers that will be required to register as a result of the Dodd-Frank Act, we are proposing amendments to Part 1A of Form ADV to require advisers to provide us additional information regarding: (i) private funds they advise; (ii) their advisory business and business practices that may present significant conflicts of interest; and (iii) advisers’ non-advisory activities and their financial industry affiliations.⁵ We also proposed certain additional changes intended to improve our ability to assess compliance risks and to enable us to identify the advisers that are covered by

¹ 17 CFR 279.1.

² 17 CFR 275.204-1.

³ If adopted, proposed rule 204-4 would be codified at 17 CFR. 275.204-4.

⁴ Pub. L. No. 111-203, 124 Stat. 1376 (2010). The proposing release is attached as Appendix A.

⁵ See section II.C of Appendix A.

section 956 of the Dodd-Frank Act addressing certain incentive-based compensation arrangements.

Form ADV is the two-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by Commission staff, and Part 2 is the client brochure. Rule 203-1 requires every person applying for investment adviser registration with the Commission to file Form ADV.⁶ If adopted, proposed rule 204-4 would require certain investment advisers exempt from registration with the Commission to file reports with the Commission by completing a limited number of items on Form ADV (“exempt reporting advisers”). Rule 204-1 requires each SEC-registered adviser to file amendments to Form ADV at least annually. If amended as proposed, rule 204-1 would require *any* adviser that is required to complete Form ADV to update the form at least annually, including the exempt reporting advisers that would be reporting to the Commission pursuant to rule 204-4. The paperwork burdens associated with rules 203-1 and 204-1 are included in the approved annual burden associated with Form ADV and thus, do not entail a separate collection of information. If adopted, the paperwork burdens associated with proposed rule 204-4 would also be included in the approved annual burden associated with Form ADV and likewise would not entail a separate collection of information. If the proposed amendments to Form ADV and rule 204-1 were adopted, and if proposed rule 204-4 were adopted, the annual aggregate burden associated with the collections of information for Form ADV would, therefore, be affected. The collections would be necessary to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, conflicts of interest and its advisory personnel.

⁶ The Commission has not proposed amendments to rule 203-1.

The title of the affected collection of information is: “Form ADV under the Investment Advisers Act of 1940.” Its OMB control number is 3235-0049. 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.

2. Purpose of the Information Collection

The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about an adviser, its business, conflicts of interest and its advisory personnel. We use the information to determine eligibility for registration with us and to manage our regulatory, examination, and enforcement programs. Clients use certain of the information to determine whether to hire an adviser and, if hired, how to manage that relationship.

This collection of information is found at 17 CFR 275.279.1 and it is mandatory. Responses are not kept confidential. Most of the respondents to the Form ADV collection of information are investment advisers registered with the Commission or applying for registration with the Commission. Under the proposal, additional respondents to the Form ADV collection of information would be exempt reporting advisers. The information collected takes the form of disclosures to respondents’ clients, potential clients, and the Commission.

3. Role of Improved Information Technology

The information collected pursuant to Form ADV takes the form of disclosures made by investment advisers to their clients and potential clients and reporting to the Commission. Investment advisers currently file their Form ADV electronically on the IARD system. This method of collecting information reduces the regulatory burden upon investment advisers by permitting them to file applications for registration, and

amendments thereto, at one central location, rather than filing Form ADV separately with the Commission and the states for notice filing purposes.

Exempt reporting advisers who would be subject to reporting, but not registration, requirements would submit their reports through the IARD using the same process as registered investment advisers. Because exempt reporting advisers may be required to register on Form ADV with one or more state securities authorities, use of the existing form and filing system would also permit these advisers to satisfy both state and Commission requirements with a single electronic filing. Our proposed approach would permit an adviser to transition from filing reports with us to applying for registration under the Act by simply amending its Form ADV; the adviser would check the box to indicate it is filing an initial application for registration, complete the items it did not have to answer as an exempt reporting adviser, and update the pre-populated items that it already has on file.

4. Efforts to Identify Duplication

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

5. Effect on Small Entities

The requirements of the proposed amendments to Form ADV would be the same for all investment advisers registered with the Commission, and they would be the same for all exempt reporting advisers, including (in both cases) those advisers that are small entities. Our rule and form amendments would not affect most advisers that are small entities because they are generally required to be registered with one or more state securities authorities and not with us.

6. Consequences of Less Frequent Collection

The collection of information required by the form is necessary to protect investors by providing clients and potential clients, as well as the Commission, with information about the adviser, adviser, its business, its conflicts of interest and its advisory personnel. The consequences of not collecting this information would be that clients and prospective clients may not have the information they need in order to evaluate the adviser's business practices and to determine whether to hire an adviser and, if hired, how to manage that relationship. In addition, if the information is either not collected or is collected less frequently, the Commission's ability to protect investors would be reduced.

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

Not applicable.

8. Consultation Outside the Agency

In its release proposing amendments to Form ADV and related rules, the Commission requests public comment on the effect of information collections under these amendments. Comments may be viewed at <http://www.sec.gov/comments/s7-36-10/s73610.shtml>. The Commission will consider all comments received on the proposal. 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

None.

10. Assurance of Confidentiality

The information collected pursuant to Form ADV is through filings with the Commission. These disclosures are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimates of Hour Burden

The current total annual burden for all advisers completing, amending, and filing Form ADV (Part 1 and Part 2) with the Commission, approved recently in connection with amendments we adopted recently to Part 2,⁷ is 268,457 hours.⁸ This burden is based on an average total collection of information burden of 36.24 hours per adviser for the first year that an adviser completes Form ADV.

We expect that an increase in the information requested in Form ADV Part 1A as a result of the proposed amendments would increase the currently approved collection of information associated with Form ADV. In addition, the annual burden also would increase as a result of an increase in the number of respondents attributable to new investment adviser registrations and the proposed use of the form for reporting by exempt reporting advisers. We discuss below, in three sub-sections, the estimated revised collection of information requirements for Form ADV: first, we address the change to the collection as a result of our proposed amendments to Part 1A of Form ADV *excluding* those related to private fund reporting for registered advisers; second, we discuss the

⁷ See *Amendments to Form ADV*, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (“Part 2 Release”), section VI at nn. 341 and 342 and accompanying text. This estimate includes the annual burden associated with advisers’ obligations to deliver to clients copies of their codes of ethics upon request.

⁸ The approved burden is comprised of 11,658 advisers preparing an initial filing of Form ADV at 36.24 hours, which is amortized over a three-year period (the estimated period that advisers are expected to use Form ADV) for an annual burden of 152,909 hours. The burden also includes two amendments to Form ADV annually, one annual amendment and one other than annual amendment, for an annual burden of 87,435 hours; an annual burden of 11,658 hours to account for new brochure supplements that advisers are required to prepare; and 16,455 hours attributable to the obligation to deliver to clients codes of ethics upon request.

proposed amendments related to private fund reporting for registered advisers; and third, we address the proposed amendments to Part 1A of Form ADV for its use as a reporting form by exempt reporting advisers.

1. Changes in Average Burden Estimates and New Burden Estimates

a. Estimated Change in Burden Related to Proposed Part 1A Amendments (Not Including Private Fund Reporting)

We are proposing amendments to many Items in Part 1A, some that are merely technical changes or very simple in nature, and others that would require more of an adviser's time to respond. The paperwork burdens of filing an amended Form ADV, Part 1A would, however, vary among advisers, depending on factors such as the size of the adviser, the complexity of its operations, and the number or extent of its affiliations. Although burdens would vary among advisers, we believe that the proposed revisions to Part 1A would impose few additional burdens on advisers in collecting information as advisers should have ready access to all the information necessary to respond to the proposed items in their normal course of operations. We also are working with FINRA, as our IARD contractor, to implement measures intended to minimize the burden for advisers filing proposed amended Form ADV on IARD (*e.g.*, pre-populating fields and drop-down boxes for common responses). We anticipate, moreover, that the responses to many of the questions are unlikely to change from year to year, minimizing the ongoing reporting burden associated with these questions.

In large part, the amendments we propose to Form ADV, Part 1A, including those to account for the statutory changes in the threshold for SEC registration, primarily refine or expand existing questions or request information advisers already have for compliance purposes. For instance, some of the proposed changes to Item 5 would require advisers to provide numerical responses to certain questions about their employees. An adviser

would likely already have this information in order to respond to those questions today by checking boxes that correspond to a range of numbers. Likewise, the proposed amendments to Item 8 require advisers to expand on information they provide in response to existing Item 8, such as whether the broker-dealers that advisers recommend or have discretion to select for client transactions are related persons of the adviser. Other questions expand upon existing requirements to elicit information advisers would already have available for compliance purposes, such as whether the soft dollar benefits they currently report receiving under Item 8 qualify for the safe harbor under section 28(e) of the Exchange Act for eligible research or brokerage services. As amended, Item 2 would require an adviser to report to us its basis for registration or reporting, as already determined for compliance purposes. Other proposed amendments to Items 5, 6 and 7 expand existing lists of information advisers already provide to us on Form ADV, such as types of advisory activities the advisers perform and other types of business engaged in by advisers and their related persons. We believe several of the new questions we propose would merely require advisers to provide readily available or easily accessible information, such as Chief Compliance Officer contact information and whether the adviser has \$1 billion or more in assets in Item 1, form of organization in Item 3, or types of investments about which they provided advice during the fiscal year for which they are reporting in Item 5.

We anticipate other proposed questions may take longer for advisers to complete, even with readily available information, such as calculating regulatory assets under management according to our revised instruction. Other proposed new items may present greater burdens for some advisers, but not others, depending on the nature and complexity of their businesses, such as the proposed requirement to provide a list of the

SEC file numbers of investment companies they advise, or providing expanded information about related person financial industry affiliates.

We estimate these proposed amendments to Part 1A of Form ADV would take each adviser approximately 4.5 hours, on average, to complete. We have based this estimate, in part, by comparing the relative complexity and availability of the information elicited by the proposed items and the nature of the response required (*i.e.*, checking a box as opposed to providing a narrative response) to the current form and its approved burden. As a result, we estimate the average total collection of information burden would increase to 40.74 hours per adviser for the first year that an adviser completes Form ADV (Part 1 and Part 2).⁹

b. New Estimated Burden Related to Proposed Private Fund Reporting Requirements

The amendments that we propose to Item 7.B. and Section 7.B. of Schedule D to collect new data on private funds managed by advisers would provide us with basic census data on private funds and would permit us to conduct a more robust risk assessment of private fund advisers for purposes of targeting our examinations. The information would include fund data such as basic organizational, operational, and investment characteristics of the fund; the amount of assets held by the fund; and the fund's service providers or gatekeepers. We believe much of the information we are proposing to be reported to us should be readily available to private fund advisers because, among other things, it is information that private fund investors commonly seek in their due diligence questionnaires or it is information that would often be included in a private placement memorandum offering fund shares.

Although we understand that the information we are proposing to require for private funds typically would be readily available to advisers to these funds, we expect

⁹ Current approved per adviser total (36.24) + estimated per adviser increase (4.5) = 40.74.

that these amendments could require advisers, particularly those with many private funds, to be subject to a significantly increased paperwork burden. We are proposing certain measures to minimize the increase in burden associated with this proposed reporting requirement. We propose to permit a sub-adviser to exclude private funds for which an adviser is reporting on another Schedule D, and would permit an adviser sponsoring a master-feeder arrangement to submit a single Schedule D for the master fund and all of the feeder funds that would otherwise be submitting substantially identical data.¹⁰ We also propose to permit an adviser with a principal office and place of business outside the United States to omit a Schedule D for a private fund that is not organized in the United States and that does not have any investors who are “United States persons.”¹¹ And as discussed above, we are working with FINRA to implement measures intended to minimize the burden for advisers filing proposed amended Form ADV, such as the ability to automatically populate private fund service provider information provided for other funds advised by the same adviser. Finally, we note that as proposed, Item 7.B. would no longer require advisers to report the funds that their related persons advise on Schedule D, which we expect would decrease the burden on private fund advisers. Taking into account, as discussed above, the scope of the information we propose to request and our understanding that much of the information is readily available, as well as the technology upgrades we expect to be incorporated into the IARD, we estimate advisers to private funds would each spend, on average, one hour per private fund to complete these questions.

c. New Estimated Burden Related to Proposed Exempt Reporting Adviser Reporting Requirements

¹⁰ See Appendix A, nn. 153-154 and accompanying text.

¹¹ See Appendix A, n.155 and accompanying text.

Exempt reporting advisers would be required to complete a limited number of items in Part 1A of Form ADV (consisting of Items 1, 2.C., 3, 6, 7, 10, 11 and corresponding schedules), and are not required to complete Part 2. We believe the information required by these items should be readily available to any adviser, particularly the identifying data and control person information required by Items 1, 3, and 10. The check-the-box style of most of these items, as well as some of the features of the IARD system (such as drop-down boxes for common responses) should also keep the average completion time for these advisers to a minimum. Moreover, in our staff's experience, the types of advisers that would meet the criteria for exempt reporting advisers are unlikely to have significantly large numbers of affiliations, nor do we expect them to have to report disciplinary events at a greater rate than currently registered advisers.¹² We estimate that these items, other than Item 7.B., would take each exempt reporting adviser approximately two hours to complete. We anticipate that, like registered advisers, exempt reporting advisers would each spend an additional hour per private fund to complete Item 7.B. and Schedule 7.B.

2. Annual Burden Estimates

a. Estimated Annual Burden Applicable to All Registered Investment Advisers

i. Estimated Initial Hour Burden (Not Including Burden Applicable to Private Funds)

As a result of the transition filing discussed in the Release,¹³ we expect the total number of registered adviser respondents to this collection of information would be 9,150.¹⁴ Approximately 11,850 investment advisers are currently registered with the

¹² As of September 1, 2010, approximately 13% of SEC-registered investment advisers reported a disclosure in Item 11 of Form ADV.

¹³ See section IV.B.1. of Appendix A.

¹⁴ See Appendix A, n. 377.

Commission.¹⁵ We expect 4,100 will withdraw from registration.¹⁶ We expect about 750 advisers who currently rely on the private adviser exemption to apply for registration with us, and we estimate that approximately 650 new advisers will register with us each year beginning in 2011.¹⁷

The estimated total annual burden applicable to these advisers, including new registrants, but excluding private fund reporting requirements, is 372,771 hours.¹⁸ We believe that most of the paperwork burden would be incurred in advisers' initial submission of the new and amended items of Form ADV Part 1A, and that over time this burden would decrease substantially because the paperwork burden will be limited to updating information. Amortizing this total burden imposed by Form ADV over a three-year period to reflect the anticipated period of time that advisers would use the revised Form would result in an average burden of an estimated 124,257 hours per year,¹⁹ or 13.58 hours per year for each new applicant²⁰ and for each adviser currently registered with the Commission that would re-file through the IARD.

ii. Estimated Initial Hour Burden Applicable to All Registered Advisers to Private Funds

The amount of time each of the registered advisers to private funds would incur to complete Item 7.B. and Section 7.B. of Schedule D would vary depending on the number

¹⁵ Based on IARD data as of September 1, 2010.

¹⁶ The Dodd-Frank Act raises the threshold for Commission registration of investment advisers generally to \$100 million. Advisers with assets under management of less than \$100 million are generally regulated and registered with the state securities authorities. See section IV.B.1. of Appendix A.

¹⁷ The Dodd-Frank Act eliminated the private adviser exemption, which permitted advisers will result in additional advisers registering with the Commission. $(4,100 \text{ (SEC advisers expected to withdraw from registration)} / 11,850 \text{ (total SEC advisers)}) \times 1000 \text{ (average number of new advisers registered with the Commission each year)} = 0.35 \times 1000 = 350$ (number of additional new advisers registering with the states, not the SEC). $1000 - 350 = 650$. See also Appendix A, n.422.

¹⁸ $40.74 \text{ per-adviser burden} \times 9,150 = 372,771 \text{ hours}$.

¹⁹ $372,771 / 3 = 124,257$.

²⁰ $124,257 / 9,150 = 13.58$.

of funds the advisers manage. Of the 9,150 advisers currently registered with us, approximately 3,500 indicate that they are advisers to private funds.²¹ Due to the assets under management these advisers report on Form ADV,²² and considering that today these advisers either do not qualify for the private adviser exemption or choose not to rely on it, we expect these advisers to remain registered with us. Based on Form ADV filings by these advisers, we estimate that 50% of these advisers, or 1,800, currently advise an average of 3 private funds each; 45%, or 1,550 advisers, currently advise an average of 10 private funds each, and the remaining 5%, or 150 advisers, manage an average of 83 private funds each.²³ As we discussed above, we estimate that private fund advisers would spend, on average, one hour per private fund to complete Item 7.B. and Section 7.B. of Schedule D. As a result, the private fund reporting requirements that would be applicable to registered investment advisers would add 33,350 hours to the overall annual burden applicable to registered advisers.²⁴

In addition to the registered advisers that advise private funds today, we estimate that about 200 of the 650 new advisers that will register with us annually will manage private funds,²⁵ and an estimated 750 new private fund advisers will register with us that

²¹ 3,500 advisers indicate by reporting a fund in Schedule D, Section 7.B. that they, or a related person, advise private funds or investment related funds. Based on IARD data as of September 1, 2010.

²² Approximately 71% of the advisers to private funds or investment related funds report assets under management over \$100 million.

²³ Based on IARD data as of September 1, 2010. Form ADV currently asks for an adviser to report about investment-related partnerships and limited liability companies advised by the adviser *and* its related persons. As a result, the data we have obtained from IARD over-estimates the average number of funds as a result of reporting of the same fund multiple times by affiliated registered advisers.

²⁴ $(1,800 \text{ advisers} \times 3 \text{ hours} (3 \text{ funds} \times 1 \text{ hour per fund})) + (1,550 \text{ advisers} \times 10 \text{ hours} (10 \text{ funds} \times 1 \text{ hour per fund})) + (150 \text{ advisers} \times 83 \text{ hours} \times 1 \text{ hour per fund}) = 5,400 + 15,500 + 12,450 = 33,350$.

²⁵ About 30% of current registrants report that they advise one or more private funds. $(3,500 \text{ advisers to private funds} / 11,850 \text{ registered advisers})$. Applying the same proportion to new registrants results in approximately 200 additional advisers to private funds each year. $(650 \times .30 = 195)$.

previously relied on the private adviser exemption. We believe that these 950 advisers that would be required to register will generally be similar to the 50% of our current registrants that advise, on average, 3 private funds, but believe that some portion of them may advise a greater number of funds, as the estimated 750 currently exempt private advisers rely on the private adviser exemption, which permits up to 14 private fund clients.²⁶ In addition, with respect to the 650 new registrants we estimate annually, the elimination of the private adviser exemption will require them, unless they are eligible for another exemption, to register even if they have only a single private fund client. To account for the addition of these two groups of advisers to the registrant pool, but taking into account the demographics of our current registrant pool (with 50% having on average 3 private fund clients), we estimate that each registered private fund adviser, on average, will advise five private funds.²⁷ Accordingly, private fund reporting requirements attributable to the estimated 750 new registrants because of the elimination of the private adviser exemption would add 3,750 hours to the overall annual burden applicable to registered advisers.²⁸ We also estimate that private fund reporting requirements applicable to new registered investment advisers would add 1,000 hours to the overall annual burden applicable to registered advisers.²⁹

The total annual burden related to private fund reporting that is applicable to registered advisers would be 38,100 hours.³⁰ We believe that most of the paperwork

²⁶ Section 203(b)(3).

²⁷ Approximately 65% of advisers that reported a fund in Schedule D, Section 7.B. listed five or fewer funds and 72% of advisers that registered since September 1, 2009 and reported a fund reported five or fewer private funds. The average number of private funds reported is about five funds for the new registrants in the past year.

²⁸ 750 newly registering advisers x 5 private funds on average x 1 hour/private fund = 3,750.

²⁹ 200 new advisers x 5 private funds on average x 1 hour/private fund = 1,000.

³⁰ 33,350 for existing registered advisers + 3,750 for no longer exempt advisers + 1,000 for estimated new registrants due to growth = 38,100.

burden would be incurred in connection with advisers' initial submission of private fund data, and that over time this burden would decrease substantially because the paperwork burden will be limited to updating information. Amortizing this total burden imposed by Form ADV over a three-year period, as we did above with respect to the initial filing or re-filing of the rest of the form, would result in an average burden of an estimated 12,700 hours per year,³¹ or 2.85 hours per year for each new private fund adviser³² and for each private fund adviser currently registered with the Commission.

iii. Estimated Annual Burden Associated with Amendments, New Brochure Supplements and Delivery Obligations

The current approved collection of information burden for Form ADV has three additional elements: (1) the annual burden associated with annual and other amendments to Form ADV, (2) the annual burden associated with creating new Part 2 brochure supplements for advisory employees throughout the year, and (3) the annual burden associated with delivering codes of ethics to clients as a result of the offer of such codes contained in the brochure. Although we do not anticipate that our proposed amendments to Form ADV would affect the per adviser burden imposed by these three elements, the Dodd-Frank Act's amendments to sections 203A and 203(b)(3) will change our estimates of the number of advisers subject to them, which will result in a change to the total annual burden associated with these elements of the collection of information for Form ADV.³³

³¹ $38,100 / 3 = 12,700$.

³² $12,700 / [3,500 + 200 + 750] = 2.85$.

³³ We anticipate that the clarification we are proposing to make to the brochure supplement (Part 2B) would not affect this cost burden estimate. See Appendix A, n.205 and accompanying text for a discussion of this proposed clarifying amendment.

We continue to estimate that, on average, each adviser filing Form ADV through the IARD will likely amend its form two times during the year.³⁴ We estimate, based on IARD data, that advisers, on average, make one interim updating amendment (at an estimated 0.5 hours per amendment) and one annual updating amendment (at an estimated 6 hours per amendment) each year. We also expect advisers, on average, to continue to incur one hour annually to prepare new brochure supplements as required by Part 2 of the form,³⁵ and to continue to spend 1.3 hours annually to meet obligations to deliver codes of ethics to clients.³⁶ These obligations would add 80,520 hours annually to the collection of information. These 80,520 hours consist of 59,475 hours attributable to amendments,³⁷ 9,150 hours attributable to the creation of new brochure supplements,³⁸ and 11,895 hours for delivery of codes of ethics.³⁹

b. Estimated Annual Burden Applicable to Exempt Reporting Advisers

i. Estimated Initial Hour Burden

Based on publications, reports, and general information publicly available from trade organizations, financial research companies, and news organizations as well as safe harbor filings with the SEC, we expect approximately 2,000 investment advisers will qualify for an exemption from registration, but will be required to submit reports to us on Form ADV.⁴⁰ The paperwork burden applicable to these new exempt reporting advisers

³⁴ Based on IARD system data regarding the number of filings of Form ADV amendments.

³⁵ See section VI of Part 2 Release.

³⁶ *Id.*

³⁷ (9,150 advisers x .5 hours/other than annual amendment) + (9,150 advisers x 6 hours/annual amendment) = 59,475.

³⁸ 9,150 advisers x 1 hour = 9,150.

³⁹ 9,150 advisers x 1.3 hours = 11,895.

⁴⁰ This estimate was collectively derived from various sources including the National Venture Capital Association's Yearbook 2010 (<http://www.nvca.org>), First Research reports (<http://www.firstresearch.com>), Preqin reports (<http://www.preqin.com>), Bloomberg (<http://www.bloomberg.com>), the Managed Funds Association

would consist of the burden attributable to completing a limited number of items in Part 1A as well as the burden attributable to the private fund reporting requirements of Item 7.B. and Section 7.B. of Schedule D. We estimated the burden to complete the subset of items in Part 1A applicable to exempt reporting advisers, above, to be two hours, which would result in an annual burden of approximately 4,000 hours.

As discussed above, we estimate the private fund reporting requirements of the form to be one hour per private fund. We assume that each exempt reporting adviser currently relies on the private adviser exemption and, therefore, has 14 or fewer private fund clients. Based on reporting by registered advisers to private funds and industry publications and reports, we expect each of these advisers, on average, advises five private funds.⁴¹ Accordingly, we would attribute an additional 10,000 burden hours to exempt reporting advisers' private fund reporting requirements.⁴²

The estimated total annual hour burden applicable to exempt reporting advisers is 14,000 hours.⁴³ We believe that most of the paperwork burden would be incurred in advisers' initial submission of private fund data, and that over time this burden would decrease substantially because the paperwork burden would be limited to updating information. Amortizing this total burden imposed by Form ADV over a three-year period, as we did above with respect to the initial filing for registered advisers, would

(<http://www.managedfunds.org>), PerTrac data (<http://www.pertrac.com>), and Form D data. Specific data relevant to the number or types of advisers that would be exempt reporting advisers was not available, but the information located did inform the staff to the probable number of exempt reporting advisers.

⁴¹ *Id.* Based upon the reported general number of private funds and the estimated number of advisers to these private funds, it is estimated that each adviser advises five private funds on average. (approximately 10,000 private funds / estimated 2,000 advisers = 5 private funds per adviser.

⁴² 2,000 exempt reporting advisers x 5 private funds/adviser x 1 hour/private fund = 10,000. *See id.* for 5 funds estimate.

⁴³ 4,000 + 10,000 = 14,000.

result in an average burden of an estimated 4,667 hours per year,⁴⁴ or 2.33 hours per year, on average, for each exempt reporting adviser.⁴⁵

ii. Estimated Annual Burden Associated with Amendments

In addition to the burdens associated with initial completion and filing of the portion of the form that exempt reporting advisers would be required to prepare, we estimate that, on average, each exempt reporting adviser would prepare an annual updating amendment and 20% of these advisers would file an interim updating amendment.⁴⁶ With respect to an exempt reporting adviser's annual updating amendment of Form ADV, we expect that advisers would not have to spend a significant amount of time entering responses into the electronic version of the form to file their annual updating amendments because IARD will automatically pre-populate their prior responses. Based on this consideration, we estimate that the average exempt reporting adviser will spend 1 hour per year completing its annual updating amendment to Form ADV. This estimate is based on our estimate for registered advisers, but it is 85% shorter because exempt reporting advisers would be required to complete and update only a limited number of items in the form, not including Part 2. The other amendment that we estimate 20% of the exempt reporting advisers would file is an interim updating amendment to Items 1, 3, 10 or 11 of Form ADV,⁴⁷ and we estimate that this amendment would require 0.5 hours per amendment. We therefore, estimate that the total paperwork

⁴⁴ $14,000 / 3 = 4,667$.

⁴⁵ $4,667 / 2,000 = 2.33$.

⁴⁶ Approximately 20% of advisers with a fiscal year end of December that filed an other-than-amendment changed Item 1 or 11 between April 1, 2009 and December 31, 2009 (period between annual amendment filing time).

⁴⁷ See General Instruction 4 to Form ADV.

burden on exempt reporting advisers of amendments to Form ADV would be 2,200 hours per year.⁴⁸

3. Monetized Total Hour Burden

The revised total annual collection of information burden for registered advisers to file and complete the revised Form ADV (Parts 1 and 2), including the initial burden for both existing and anticipated new registrants, including private fund advisers, plus the burden associated with amendments to the form, preparing brochure supplements and delivering codes of ethics to clients is estimated to be approximately 217,477 hours per year,⁴⁹ for a monetized total of \$54,804,246.⁵⁰ The total annual collection of information burden for exempt reporting advisers to file and complete the required Items of Part 1A of Form ADV, including the burden associated with amendments to the form, would be 6,867 hours,⁵¹ for a monetized total of \$1,730,526.⁵² We, therefore, estimate that, if the

⁴⁸ [(2,000 advisers x .20) x 0.5 hours] = 200 hours per year for interim amendments. 2,000 advisers x 1 hour = 2,000 hours per year for annual amendments. 200 + 2,000 = 2,200 hours. Exempt reporting advisers would not incur any burden to prepare new brochure supplements, however, as is required of registered advisers; nor would they be required to meet obligations to deliver codes of ethics to clients, as is also required of registered advisers. Similarly, we have not prepared an estimated annual cost burden to be incurred by exempt reporting advisers because the cost burden attributed to registered advisers is associated with Part 2 obligations to which exempt reporting advisers are not subject.

⁴⁹ 124,257 hours per year attributable to initial preparation of Form ADV + 12,700 hours per year attributable to initial private fund reporting requirements + 59,475 hours per year for amendments to Form ADV + 9,150 hours per year for brochure supplements for new employees + 11,895 hours per year to meet code of ethics delivery obligations = 217,477 hours.

⁵⁰ We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. Data from the SIFMA Management and Earnings Report, 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 costs for these positions are \$210 and \$294 per hour, respectively. [108,738 hours x \$210 = \$22,834,980] + [108,739 hours x \$294 = \$31,969,266] = \$54,804,246. For a registered adviser that does not already have a senior compliance examiner or a compliance manager, we expect that a person performing a similar function would have similar hourly costs.

⁵¹ 4,667 hours per year attributable to initial preparation of Form ADV + 2,200 hours per year for amendments = 6,867 hours.

⁵² We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing

amendments to Form ADV are adopted, the total annual hour burden for the form would decrease by 44,113 hours to 224,344,⁵³ for a monetized total of \$56,534,772.⁵⁴ The resulting blended average per adviser amortized burden for Form ADV would be 20.12 hours⁵⁵ (for a monetized total of approximately \$5,070),⁵⁶ which would consist of an average annual amortized burden of 23.77 hours (for a monetized total of approximately \$5,990) for each of the estimated 9,150 registered advisers, and 3.43 hours (for a monetized total of approximately \$865) for each of the estimated 2,000 exempt reporting advisers.⁵⁷

13. Estimate of Total Annual Cost Burden

The current approved collection of information burden for Form ADV has a one-time initial cost for outside legal and compliance consulting fees in connection with the initial preparation of Part 2 of Form ADV by advisers registered with or applying for registration with the Commission.

Although we do not anticipate that our proposed amendments to Form ADV would affect the per adviser cost burden estimates, the Dodd-Frank Act's amendments to sections 203A and 203(b)(3) of the Adviser's Act will result in a significant change to our estimates of the number of registered advisers subject to these costs. The current

similar functions. Data from the SIFMA Management and Earnings Report, 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 costs for these positions are \$210 and \$294 per hour, respectively. $[3,433 \text{ hours} \times \$210 = \$720,930] + [3,434 \text{ hours} \times \$294 = \$1,009,596] = \$1,730,526$. For an exempt reporting adviser that does not already have a senior compliance examiner or a compliance manager, we expect that a person performing a similar function would have similar hourly costs.

⁵³ $217,477 + 6,867 = 224,344$.

⁵⁴ $\$54,804,246 + \$1,730,526 = \$56,534,772$.

⁵⁵ $224,344 / 11,150 = 20.12$.

⁵⁶ $56,534,772 / 11,150 = 5070.38$

⁵⁷ Hours: registered advisers ($217,477 / 9,150 = 23.77$), exempt reporting advisers ($6,867/2,000 = 3.43$). Monetized cost: registered advisers ($\$54,804,246 / 9,150 = \$5,989.54$), exempt reporting advisers ($\$1,730,526 / 2,000 = \865.26).

approved collection is based on an estimate that 2,941 advisers will elect to obtain outside legal assistance and 3,441 advisers will elect to obtain outside consulting services, for a total cost among all respondents of \$22,775,400 for a one-time initial cost to draft the new narrative brochure.⁵⁸

By the time the amendments to Form ADV that we are proposing today would become effective, substantially all SEC-registered advisers will have completed their initial filing of the narrative brochure required by our recent amendments to Part 2 of Form ADV and will have already incurred these estimated one-time costs.⁵⁹ As a result, the only respondents that we expect would incur legal and consulting costs for the initial drafting of Part 2 of Form ADV, subsequent to the effective date of the amendments to Part 2, would consist of the estimated 650 new advisers that we expect to register annually and the estimated 750 advisers that will have to register as a result of the elimination of the private adviser exemption.

The current approved burden estimates that the initial per adviser cost for legal services related to preparation of Part 2 of Form ADV would be \$3,200 for small advisers, \$4,400 for medium-sized advisers, and \$10,400 for larger advisers.⁶⁰ The current approved burden also contains an initial per adviser cost for compliance consulting services related to initial preparation of the amended Form ADV that ranges from \$3,000 for smaller advisers to \$5,000 for medium-sized advisers.⁶¹ We estimate

⁵⁸ For outside legal services, $(\$4,400 \times 535 \text{ medium advisers}) + (\$3,200 \times 2,370 \text{ small advisers}) + (\$10,400 \times 36 \text{ large advisers}) = \$10,312,400$. For compliance consulting services, $(\$3,000 \times 2,371 \text{ small advisers}) + (\$5,000 \times 1,070 \text{ medium advisers}) = \$12,463,000$. $\$10,312,400 + \$12,463,000 = \$22,775,400$. See Part 2 Release, for a discussion of these estimates.

⁵⁹ See section V. of Part 2 Release.

⁶⁰ For purposes of this estimate, we categorize small advisers as advisers with 10 or fewer employees, medium advisers as having between 11 and 1,000 employees, and large advisers as those with 1,000 or more employees. See Part 2 Release, at nn. 301 and 324.

⁶¹ *Id.* at n. 325.

that the 750 new registered advisers no longer able to rely on the private adviser exemption will be medium-sized. The current approved burden anticipates that a quarter of medium-sized advisers would seek the help of outside legal services and half would seek the help of compliance consulting services. Accordingly, we estimate that 188 of these advisers would use outside legal services, for a total cost burden of \$827,200, and 375 advisers would use outside compliance consulting services, for a total cost burden of \$1,875,000, resulting in a total cost burden among all respondents of \$2,702,000.

14. Estimate of Cost to the Federal Government

There are no costs to the government directly attributable to Form ADV.

15. Explanation of Changes in Burden

The revised total annual collection of information burden for registered advisers to file and complete the revised Form ADV (Parts 1 and 2), including the initial burden for both existing and anticipated new registrants, including private fund advisers, plus the burden associated with amendments to the form, preparing brochure supplements and delivering codes of ethics to clients is estimated to be approximately 217,477 hours per year.⁶² This burden represents a decrease of 50,980 hours from the current approved burden.⁶³ This decrease is attributable primarily to the 4,100 advisers that we expect to withdraw from SEC registration.

Registered investment advisers are also expected to incur an annual cost burden of \$2,702,000, a reduction from the current approved cost burden of \$22,775,400. The decrease in annual cost burden is attributed to the nature of the costs, which are one-time

⁶² 124,257 hours per year attributable to initial preparation of Form ADV + 12,700 hours per year attributable to initial private fund reporting requirements + 59,475 hours per year for amendments to Form ADV + 9,150 hours per year for brochure supplements for new employees + 11,895 hours per year to meet code of ethics delivery obligations = 217,477 hours.

⁶³ Current approved burden of 268,457 hours - revised burden 217,477 hours = 50,980 decrease in hours.

initial costs to draft the narrative brochure. As the transition to the narrative brochure will have substantially been completed, the on-going costs arise from new registrants.

The total annual collection of information burden for exempt reporting advisers to file and complete the required Items of Part 1A of Form ADV, including the burden associated with amendments to the form, would be 6,867 hours.⁶⁴

We estimate that, if the amendments to Form ADV are adopted, the total annual hour burden for the form would decrease by 44,113 hours to 224,344.⁶⁵ The resulting blended average per adviser amortized burden for Form ADV would be 20.12 hours,⁶⁶ which would consist of an average annual amortized burden of 23.77 hours for the estimated 9,150 registered advisers and 3.43 hours for the estimated 2,000 exempt reporting advisers.⁶⁷

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.

⁶⁴ 4,667 hours per year attributable to initial preparation of Form ADV + 2,200 hours per year for amendments = 6,867 hours.

⁶⁵ $217,477 + 6,867 = 224,344$.

⁶⁶ $224,344 / 11,150 = 20.12$.

⁶⁷ Registered advisers ($217,477 / 9,150 = 23.77$), exempt reporting advisers ($6,867/2,000 = 3.43$).